

## **The EU deal to avoid Brexit: Take it or leave**

**Stefani Weiss and Steven Blockmans**

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### **Abstract**

Beyond the drama of the European Council summit of 18-19 February 2016, what became clear was the fundamental desire on the part of the leaders of all 28 EU member states to agree a deal on the British government's demands for a renegotiated settlement on the UK's relationship within the European Union. The deal has provided David Cameron with the political capital he needed to call a date for the in/out referendum and to lead a campaign for the UK to stay in the EU. Yet, for all the technical reforms packed into it, the deal is neither a crowd pleaser nor a vote winner. It does, however, mark a watershed acknowledgement that EU integration is not a one-directional process of 'ever closer union'. Different paths of integration are now open to member states that do not compel them towards a common destination. This deal will effectively lead to a legally binding recognition that the UK is not committed to further political integration in the EU.

In this Special Report, Stefani Weiss and Steven Blockmans analyse the substance of the "Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union" and shed light on its legal character. They do so by contextualising this EU deal to avoid Brexit, and draw on the conclusions reached in a simulation of European Council negotiations between representatives of think tanks in the European Policy Institutes Network (EPIN), conducted by CEPS and the Bertelsmann Stiftung in October 2015.

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# The EU deal to avoid Brexit: Take it or leave

Stefani Weiss and Steven Blockmans\*

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With its all-night negotiations, ‘war room’ of lawyers, heated private consultations, and frustrated snippets delivered to a waiting press left to muse on the revised ‘English’ menu over the day, the European Council meeting of 18-19 February 2016 had all the theatrical trappings of a make-or-break summit. Beyond the drama, however, what became clear was the fundamental desire on the part of the leaders of all 28 EU member states to agree a deal on the British government’s demands for a renegotiated settlement on the UK’s relationship within the European Union.

As much as certain European leaders may have resented Prime Minister Cameron for the tactical blackmail he deployed to push through mostly technical reforms, which were either not a priority for them or cut against their interests, no-one wanted to see the summit fail or fan the flames of Brexit. At the same time, the heads of state or government were keen to ensure that the UK would not be allowed to reopen talks in the event of a ‘leave’ vote in the British referendum; an idea embraced by Mr. Cameron to kill the idea of a ‘neverendum’. And so they joined together in a move to adopt a ‘take it or leave’ clause in the deal.<sup>1</sup>

Now that the play is over and the curtain closed we are left wondering if there is any clarity in what was agreed. The short answer is No, because it is highly unlikely that the referendum on whether the UK should stay in or leave the EU will be decided on the minutiae of any reform to child benefits or tax credits. David Cameron will have to campaign on bigger ticket issues if he wishes to convince his electorate that it is better for the UK to remain in the EU.

Yet the deal is important, for at least four reasons. First, it has provided Mr Cameron with the political capital he needed from his fellow European leaders to call a date for the in/out referendum and to lead a campaign for the UK to stay in the European Union.

Second, it marks a watershed acknowledgement that EU integration is not a one-directional process of ‘ever closer union’ but that “different paths of integration [are] available [that] do not compel all member states to aim for a common destination”. It will effectively lead to a

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<sup>1</sup> See para. 4 of the conclusions of the European Council: “It is understood that, should the result of the referendum in the United Kingdom be for it to leave the European Union, the set of arrangements referred to in paragraph 2 above [i.e. the Decision and flanking statement and declarations] will cease to exist.” This sentence was inserted on the insistence of Belgium, backed by France.

legally binding recognition that the UK is not committed to further political integration in the EU.

Third, it lays down commitments to change secondary EU legislation, for instance on the free movement of workers and the coordination of social security systems, and to incorporate the substance of parts of the deal in the EU treaties at the time of their next revision.

Finally, the deal has set a precedent whereby one member state successfully held the rest of the EU to ransom until its demands were met. As Euroscepticism grows throughout the Union, there is a risk of contagion: (future) leaders of other member states could refer to the UK deal and threaten to steer their own country out of the Union ('Frexit', 'Plexit', etc.) if its special relationship within the EU is not secured. The 'take it or leave' or 'self-destruct' clause inserted into the deal at the last minute will not deter copycat exception-seekers<sup>2</sup> because the genie is now out of the bottle.

This paper analyses the substance of the "Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union" and sheds light on its legal character. It does so by contextualising this EU deal to avoid Brexit, in part by drawing on the conclusions reached in a simulation of European Council negotiations between representatives of think tanks in the European Policy Institutes Network (EPIN), conducted by CEPS and the Bertelsmann Stiftung in October 2015.<sup>3</sup>

## Inception

The Brexit scenario was opened up by the UK's own Prime Minister more than three years ago. In an effort to deal with the 'Europe' question that has vexed his Conservative Party and Britain for decades, Cameron delivered his famous Bloomberg speech on 23 January 2013. In this speech he promised not only to negotiate better terms for the UK's EU membership but – after a successful renegotiation – to let the British people decide in a referendum whether they would rather remain in the EU or leave. Despite this high-stakes gamble with the future of his party, country and the entire EU, and despite the generally positive assessment of his administration's 'Balance of Competences Review' at the end of 2014, the British Prime Minister did not develop a 'plan de campagne'.<sup>4</sup> In fact, he had to be pressed by his colleagues in the European Council to end months of speculation about the terms for renegotiation. In his letter of 10 November 2015 to European Council President Tusk,

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<sup>2</sup> Para. 4 of the European Council conclusions carries some legal clout when read in conjunction with para. 1 of Section E of the Decision itself: "Any Member State may ask the President of the European Council that an issue relating to the application of this Decision be discussed in the European Council." In other words, if invoked by a member state as a basis to seek its own exceptional deal, any other member state can oppose the application of the deal with the UK in the future.

<sup>3</sup> See S. Blockmans and S. Weiss, "Will Cameron Get What He Wants? Anticipating reactions to Britain's EU reform proposals", CEPS Commentary, 29 October 2015.

<sup>4</sup> Where the British government failed to draw conclusions from the exercise, CEPS plugged the gap. See the contributions to M. Emerson (ed.), *Britain's Future in Europe: Reform, Renegotiation, Repatriation, or Secession?* (Brussels/London, CEPS/Rowman and Littlefield 2015).

Cameron effectively listed the four reform ‘baskets’ that had already become the subject of wide public debate.<sup>5</sup>

The first item on his reform agenda related to the issue of sovereignty. The UK wanted to receive an opt-out from the “ever closer union” mentioned in the preamble and Article 1 of the Treaty on European Union. In addition, Cameron demanded the creation of a ‘red card’ procedure for national parliaments to halt draft EU legislation. The second basket on economic governance was intended to ring-fence the City of London from potentially harmful EU financial and banking regulations (on, for example, capital ratios, a split between investment and retail divisions). Furthermore, the UK effectively suggested the introduction of a veto against decisions taken by a presumed ‘eurozone caucus’ within the Council. The third and only basket framed in positive terms called for the strengthening of the competitiveness of the internal market. Finally, Cameron demanded derogations from the rules on the free movement of labour to be able to restrict the social benefits and tax credits claimed by EU migrant workers in the UK for a period of up to four years.

Generally speaking, other member state capitals gave a rather cool reception to three out of the four EU reform demands. But hopes were raised that a deal could be reached when David Cameron gave a conciliatory speech at the December 2015 European Council meeting. President Tusk kept a tight rein on the technical negotiations in preparation for the summit in February. Consultations were intended to help the UK successfully conclude the renegotiation of its position within the EU. Other member states were not allowed to muddy the waters with counterclaims on issues other than the four under negotiation. Nobody seemed ready to contemplate failure and for this reason no plan B was prepared.

This approach was reflected in the “Draft Decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union”, released by President Tusk on 2 February 2016. Most EU member states welcomed the draft and called it a good and fair basis for negotiations. Sticking points remained of course, with France and Germany opposing any special rules for the City of London, and Poland and other eastern member states drawing red lines on aspects of intra-EU migration, as did Belgium, Greece and Italy on ever closer union.<sup>6</sup> But the prevailing mood among the diplomats charged with negotiating the draft text in-between brackets was that where there is so obviously a political will, there will also be a way.

Despite the delays and drama of the European Council summit of 18-19 February, it comes as no real surprise that the heads of state or government endorsed the New Settlement<sup>7</sup> for the United Kingdom within the European Union.

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<sup>5</sup> See M. Emerson, “Dear Donald ... Yours, David”, CEPS Commentary, 12 November 2015.

<sup>6</sup> These indications are reflected in the national position papers that underpinned the Simulation Game organised with EPIN think tankers. See Appendix.

<sup>7</sup> The UK Settlement documents are now published in the Official Journal/C 69I, pp. 1–16: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2016.069.01.0001.01.ENG&toc=OJ:C:2016:069I:TOC>, 23 February 2016.

## The deal

### *Section A: Economic governance*

From the outset, the wish to obtain safeguards for the UK against legal acts or intergovernmental agreements directly linked to the functioning of the euro area featured very high on the British government's list of demands. Unsurprisingly, the attempt to rein in eurozone affairs did not fall on fertile ground among the countries with the euro as their single currency, as 'represented' in our simulation game. France and Germany were especially critical of introducing instruments that would give veto powers to 'euro-outs'. The most federalist in this regard were the member states to the south, i.e. those who had suffered the most from the euro crisis. They argued that more, not less, integration was needed to overcome the crisis, so the UK should not be granted any rights inhibiting the eurozone from progressing into a true economic and monetary union, and even further into a political union. Interestingly, even the non-euro member states that shared the concern of being sidelined and overruled by euro group decisions only cautiously supported the British case.

As one of the two EU members with an opt-out from the single currency union, the UK had long feared discrimination and being overruled by a growing eurozone caucus in the Council. This fear grew after the euro crisis forced the eurozone to become even more active in financial market regulations and to proceed with deepening integration in order to stabilise the single currency. Besides, the UK felt strongly about ring-fencing its own financial institutions against EU financial legislation taken, for example, in the realm of bank capital requirements or caps on bankers' bonuses, which were seen as undermining the competitive edge of the City of London. Furthermore, Prime Minister Cameron wanted to foreclose once and for all the possibility of the UK being drawn into bail-outs of eurozone countries, as had happened with Greece.

The 'New Settlement' addresses all of the British government's concerns. Against the threat of unduly discriminating against non-euro countries, the Decision states that no eurozone legislation should set up barriers or otherwise interfere with the internal market or trade among member states and should "respect the competences, rights and obligations of Member States whose currency is not the euro" (para. 1). Moreover, the Decision clarifies that non-euro countries or member states that are not participating in the banking union cannot be held accountable for any emergency or crisis measures taken to safeguard the financial stability of the eurozone and would be fully reimbursed for their part where the EU budget is drawn upon for rescue measures (para. 3).

As regards banking union, with its newly established single rulebook for banking supervision and resolution, the UK and the other non-euro members were assured of the right to execute their own authority over their financial institutions (para. 4). To this end, member states recognised that this might also necessitate exceptions from the uniform application of the single rulebook for non-euro member states. Yet, what form these exceptions could take was one of the highly contested issues left for decision by the heads of state or government.

Given the systemic risks that big banks pose – not only to their countries of residence but also to the financial stability of the entire European Union – a *carte blanche* for the UK was never going to be acceptable. In the end, the UK received no derogations but merely the acknowledgement that “specific provisions within the single rulebook and other relevant instruments may be necessary, while preserving the level playing field and contributing to financial stability” (para. 2). It was France, in particular, that drew a red line here. The fact that the wording of the draft Decision was tightened from “different provisions” to “specific provisions” and that the text underlines the “level playing field” in the area of financial regulation means that there will be no special favours for the City of London vis-à-vis the eurozone.

Another hotly contested issue, until the very last minute of the summit negotiations, concerned the demand for a British veto in the banking union and other related eurozone affairs. A separate statement containing a draft Council Decision was annexed to the deal to reflect the compromise reached on new voting procedures in the (Ecofin) Council.<sup>8</sup> This measure will only enter into force when the Decision as a whole takes effect, i.e. on the day the British government informs the Secretary-General of the Council that the UK has decided to remain a member of the EU.

Our simulation of summit negotiations had anticipated nearly all euro member states drawing a red line with regard to emergencies in the banking sector or the liquidity of member states, situations that demand quick decision-taking. A minor exception was Ireland, whose ‘representative’ held that the double-majority voting mechanism for euro-ins and -outs in the European Banking Authority regulation could be replicated in the Council.

In real life, it was obvious from the first draft Decision issued by Tusk on 2 February 2016 onwards that the British government would not get its veto. In fact, the draft did not mention it at all. The final text of the Decision even goes so far as to emphasise that there cannot be a veto power for non-euro members in Council decision-making, even if the concerns of one of the countries is referred to the European Council for discussion.<sup>9</sup>

Instead, non-euro members will only have the right to *delay* decisions taken by qualified majority in the Council on matters pertaining to the effective management of the banking union and to the consequences of further integration of the euro area. Thereafter, as the first step, non-euro members will have the right to ask the Council to reconsider the decision “with the intent to facilitate a wider basis for agreement”. As a second step, and only if facilitation by the Presidency of the Council fails, a non-euro member state will be entitled to turn to the European Council for further discussion. The agreement says nothing about the outcome of such a discussion, but only after the European Council has been involved can the Council take over again for a final decision.

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<sup>8</sup> Statement containing a draft Council Decision on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area which will be adopted on the day the Decision referred to in point (a) takes effect (Annex II).

<sup>9</sup> Ibid., Article 1(3).

Finally, the draft text left one other issue in-between brackets for decision by the heads of state or government at the European Council meeting. It was whether an emergency brake to safeguard the interests of euro-outs could be triggered by one non-euro member state alone, as the UK wanted, or would need a higher quorum to invoke the procedure. On this, the UK won its case.

Section A closes with the commitment that "the substance [contained therein] will be incorporated into the Treaties at the time of their next revision in accordance with the relevant provisions of the Treaties and the respective constitutional requirements of the Member States", an issue we shall return to later.

### *Section B: Competitiveness*

From the outset, all member states supported Cameron in his call for a more competitive EU that could generate jobs and growth. Since President Juncker took office, the strengthening of competitiveness was also high on the agenda of the Commission. The Better Regulation Package, and the commitment to introduce an 'Annual Burden Survey' (an overview of the existing stock of EU legislation) in support of its Regulatory Fitness and Performance Programme (REFIT) programme, are examples of this prioritisation.

Accordingly, in our simulation, as in the real negotiations, this basket never constituted a serious obstacle to reaching an agreement. Of course, different member states might have proposed different measures to be taken up under this heading. The Greek representative, for instance, worried about the rapid privatisation of state-owned companies in the energy sector and suggested additional measures (e.g. investment plans) to boost competitiveness. Representatives of other member states were more in line with the British approach geared towards further market liberalisation.

What comes as a surprise in relation to the simulation experience is that the agreed competitiveness agenda in the 'New Settlement' Decision deals almost exclusively with procedures for simplifying legislation aimed at lowering administrative burdens and costs for citizens and enterprises. To this end, the Council has now been asked by the European Council "to examine the annual reviews conducted by the Commission under its Declaration on Subsidiarity with a view to ensuring that these are given appropriate follow up".<sup>10</sup>

But other than this focus on avoiding overregulation and cutting red tape, hardly any attention is paid to other elements of the EU's competitiveness agenda. The EU's ambition to pursue an active and ambitious trade policy is still flagged up. By contrast, our mock negotiations concentrated on the development of the internal market. As can be seen from the position papers appended to this report, considerable emphasis is placed on making the EU more competitive by providing fresh impetus to the completion of the Energy Union, the establishment of a digital market and the capital markets union.

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<sup>10</sup> Declaration of the Commission on a subsidiarity implementation mechanism and a burden reduction implementation mechanism (Annex III).



## Section C: Sovereignty

The UK was reassured that the phrase “ever closer union” (among the peoples of Europe) does not in itself offer “any basis for extending the scope of the Treaties or of EU secondary legislation” and does “not compel all Member States to aim for a common destination”. Significantly, the member states recognised that the UK already has a “specific situation” under the Treaties;<sup>11</sup> that Britain “is not committed to further political integration into the European Union”; and that “the references to ever closer union do not apply to [it]”. The substance of this new opt-out will be incorporated into the Treaties at the time of their next revision.

This new wording is important for Cameron, as it allows him to say to his opponents that the UK is not being dragged into a European superstate. Indeed, the UK seems to be getting “the best of both worlds”: European Economic Area (EEA) status with full voting rights.

The recognition of the UK’s exceptionalism and the explicit break with the mantra of ‘ever closer union’ does herald a more pliable European Union. The fact that the EU institutions will in future have to consider a category of states that does not adhere to the references of ever closer union may lead to a change in their approach to the initiation, adoption, implementation, interpretation and enforcement of new legislation. After all, an overly integrationist approach may leave them vulnerable to challenges by the UK.<sup>12</sup>

This suspicion is reinforced when reading that “competences conferred by the Member States on the Union can be modified, whether to increase or reduce them, only through a revision of the Treaties with the agreement of all Member States”. This message too could be interpreted as a warning by member states (like the UK) to ‘supranational’ EU institutions like the Commission and the Court of Justice that ‘competence creep’ and ‘judicial activism’ will not be tolerated. However, the introduction of this sentence also makes it clear that the New Settlement does not diminish the competences of the EU. The deal itself, therefore, does not reduce the level of integration required from members of the eurozone, or indeed from member states (like the UK) that see the EU’s added value as only residing within the single market.

By the same token, the deal recognises that “[t]he Treaties allow an evolution towards a deeper degree of integration among the Member States that share such a vision of their common future, without this applying to other Member States.” Whereas this sentence

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<sup>11</sup> The declarative part of the Decision lists 6 Protocols under which the UK has already obtained a specific status.

<sup>12</sup> See S. Booth and R. Ruparel, “What did the UK achieve in its EU renegotiation?”, Open Europe, 21 February 2016. The authors refer to the fact that, in the past, the British government has complained that there have been “persistent efforts” by the European Commission to curb the UK’s opt-out of justice and home affairs, for instance by claiming that the UK is bound by commitments in this area made in EU agreements with third countries. This point also emanates from para. 4 of Section C of the Decision: “In particular, a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU) on the area of freedom, security and justice does not bind the Member States covered by Protocols No 21 and No 22, unless the Member State concerned, where the relevant Protocol so allows, has notified its wish to be bound by the measure.”

recognises the drive towards ever closer union that is shared by countries like Belgium, which pushed hard to introduce the clarification in the text of the deal, it simultaneously reinforces the philosophy of a multi-speed EU which the UK wanted to see enshrined, black-on-white, in the Decision.

So far, however, the practical implications of this opt-out remain unclear. To a large extent, this matter will depend on how exactly the substance of the formula is incorporated into the future Treaties.

Contrary to our mock conclusions (para. 5), the heads of state or governments of the 27 other member states were much more forthcoming in acknowledging that the UK is different and thus eligible for special treatment. For many of our figurative heads of state or government, 'ever closer union' was still very close to their (sovereign) hearts. Although they were aware that the contentious phrase bears no direct (but only subsidiary, i.e. interpretative) legal consequences, they subscribed to the thrust of the guiding principle. Moreover, most shared the concern that giving up on this political idea would set a bad and potentially contagious precedent. But they were lenient, knowing that the substance of this particular branch of British exceptionalism would have to be incorporated into the Treaties at the next round of their revision.

Another aspect to the question of 'sovereignty' concerned the UK's ambition to strengthen the principle of subsidiarity by way of introducing a new blocking mechanism for national parliaments – the so-called 'red card' procedure. It was agreed that, within 12 weeks of the transmission of a new draft EU legislative act, a quorum of 55% of the votes allocated to national parliaments (i.e. 16 out of 28 parliaments) can call upon the Council (not the Commission!) to reconsider the draft act and, unless the draft is amended to accommodate the concerns expressed in the reasoned opinions, to discontinue considerations if they are seen as not complying with the principles of subsidiarity and proportionality.<sup>13</sup>

Here again, the UK's demands were accommodated to an extent not foreseen by our mock negotiators. Instead of adding yet another blocking mechanism to the existing and as yet underused 'yellow card' and 'orange card' procedures, they were only prepared to simplify and strengthen the available instruments and to consider the introduction of a 'green card' procedure as a constructive way of drawing national parliaments into the EU decision-making process. Viewed from this perspective, both the high threshold required to activate the red card procedure, and the narrow grounds of subsidiarity to trigger it, are a good thing. After all, it will take a greater number of national parliaments to go against their own governments than for a minority of the latter (35% in QMV procedures) to block a proposal in the Council.

### *Section D: Social benefits and free movement*

David Cameron's plan to ban in-work benefits for migrants from other EU countries in the UK was certainly a major driver in his attempt to secure a new relationship within a

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<sup>13</sup> Article 7(1) of Protocol No. 2.

“reformed European Union”. Although there is no evidence that the inflow of foreign workers negatively affected the employment chances of British workers,<sup>14</sup> the mood among Eurosceptics in the UK speaks otherwise. Arguably, Cameron could not have come back from Brussels without having secured tangible restrictions on intra-EU labour migration. Otherwise, his case for remaining in the EU would have come to nothing.

The other EU member states were well aware of the importance of their concessions in this basket of reform demands to Cameron’s credibility in this campaign. On the other hand, his claim of curbing benefits only for citizens of other EU member states was so diametrically opposed to the principle of non-discrimination on the ground of nationality as enshrined in the Treaties, that it was hard to see how the UK could be accommodated without damaging the fabric of the internal market and thereby the EU as a whole. From the outset, therefore, most member states have taken a firm stance and declared any attempt to limit the freedom of movement as non-negotiable. The in-work benefit issue, and even more so the UK’s demand to ban all child benefit for foreign workers with children living outside the UK, sparked one of the biggest rows at the summit. Poland, in particular, in view of its huge diaspora in the UK, spearheaded the opposition of the Visegrád countries. A compromise was only brokered at the very last minute.

Here again, the British Prime Minister has achieved a deal that is very much at the upper end of what he could have hoped for. The Decision provides for measures avoiding or limiting flows of workers that threaten the social security system, the labour market or the public service of EU member states. In this respect, EU secondary legislation will be amended to allow for a temporary suspension of the distribution of national welfare benefits in the event of an “inflow of workers from other Member States of an exceptional magnitude over an extended period of time”.<sup>15</sup>

In such exceptional situations, “on a scale that affects essential aspects of [the] social security system (...) or which leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services”, member states will be able to pull an emergency brake, “to limit access of Union workers newly entering its labour market to in-work benefits for a total period of up to four years”.<sup>16</sup>

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<sup>14</sup> See the 2012 Report of the British Home Office’s Migration Advisory Committee, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257235/analysis-of-the-impacts.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257235/analysis-of-the-impacts.pdf); and P. Lucchino, C. Rosazza-Bondibene and J. Portes, “Examining the Relationship between Immigration and Unemployment Using National Insurance Number Registration Data”, NIESR Discussion Paper No. 386, 9 January 2012, available at [www.niesr.ac.uk/sites/default/files/publications/090112\\_163827.pdf](http://www.niesr.ac.uk/sites/default/files/publications/090112_163827.pdf).

<sup>15</sup> In particular, Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1).

<sup>16</sup> The Decision reiterates the gist of recent jurisprudence of the Court of Justice on the ability of member states to deny EU migrants access to out-of-work benefits, for instance if they do not have a job: “Member States may reject claims for social assistance by EU citizens from other Member States who do not enjoy a right of residence or are entitled to reside on their territory solely because of their job-search. This includes claims by EU citizens from other Member States for benefits whose predominant function is to cover the

It is remarkable that the European Commission is of the opinion “that the kind of information provided to it by the United Kingdom (...) shows the type of exceptional situation that the proposed safeguard mechanism is intended to cover exists in the United Kingdom today. Accordingly, the United Kingdom would be justified in triggering the mechanism in the full expectation of obtaining approval.”<sup>17</sup>

Other than what the UK originally demanded, the principle of non-discrimination was taken into account. As a result, the restrictions will have to be graduated over time, from an initial complete exclusion to a growing eligibility for social benefits by foreign workers until after four years, when they will receive the same welfare payments as British citizens. This emergency brake will not operate permanently, as Mr Cameron has demanded, but can be invoked only for seven years. This is the maximum time span granted to member states in the negotiations with acceding states in order to restrict the free movement rights of citizens of the latter.

It is important to note that the decision on the implementation of such a brake will not be taken by the Commission but by the Council. Again, this underlines the predominantly intergovernmentalist thrust of the Decision in the New Settlement for the UK.

Moreover, EU leaders bowed to Mr Cameron’s second demand in this basket, and agreed to amend existing EU secondary legislation to allow member states to index child benefits, if these benefits are exported, to the standard of living of the country where the child resides.<sup>18</sup> This indexation will only apply to new migrants in the UK and from 2020 onwards all member states will have the right to this kind of indexation. In addition, existing legislation will be clarified to deal (once again) with the issue of marriages that the authorities consider to be sham and to provide for national law to apply to entry for family reunion of third country national family members with EU national principals.<sup>19</sup> The Commission has also agreed to clarify whether or not national governments can refuse entry to or remove EU nationals who pose a threat, by widening the scope of criteria to include the individual’s past conduct and that this threat may not be imminent.<sup>20</sup>

Overall, one cannot escape the conclusion that this package on social benefits and free movement presents the first-ever roll-back of integration in this area of EU activity. In our

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minimum subsistence costs, even if such benefits are also intended to facilitate access to the labour market of the host Member States.”

<sup>17</sup> Declaration of the European Commission on the Safeguard Mechanism referred to in paragraph 2(b) of Section D of the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union (Annex VI).

<sup>18</sup> See the intention of amending Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1), as expressed in the Declaration of the European Commission on the indexation of child benefits exported to a Member State other than that where the worker resides (Annex V).

<sup>19</sup> See the intention of amending Directive 2004/38 of the European Parliament and of the Council of 30 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77), as expressed in the Declaration of the European Commission on issues related to the abuse of the right of free movement of persons (Annex VII).

<sup>20</sup> Annex VII: “These clarifications will be developed in a Communication providing guidelines on the application of Union law on the free movement of Union citizens.”

simulation of negotiations within the European Council, representatives of EU member states took a very principled and integrationist stance towards the contentious issues in this basket. They withstood the pressure from the UK government to grant Britain, or any other member state for that matter, the right to suspend welfare payments to foreign EU workers. Instead, they argued that existing EU law, as interpreted by the Court of Justice in two recent rulings, allows member states to take national measures to curb the abuse of in-work benefits, as long as these measures are non-discriminatory on grounds of nationality.

## Intergovernmental and legally binding?

One of the fiercely debated questions during the summit was whether the changes in the UK's renegotiated settlement are legally binding. This follows on from the Prime Minister's demand in his letter of 10 November 2015 that some of the concerns listed should be addressed by means of an instrument in a "formal, legally binding way".

Paragraph 3 of the European Council conclusions seems to leave no doubt: "this Decision is legally binding" and "gives legal guarantee that the matters of concern to the United Kingdom as expressed in the letter of 10 November 2015 have been addressed". However, as usual in law, the picture is more nuanced, and so the answer should really be 'it depends'.

To start with, the deal does not constitute a legal act of one of the institutions of the Union.<sup>21</sup> As a "Decision of the Heads of State or Government, meeting within the European Council" it is therefore not an act that is covered by EU law and over which the Court of Justice of the EU has jurisdiction to decide on its validity or interpretation.<sup>22</sup> Rather, the Decision constitutes an intergovernmental agreement intending to offer clarification that "will have to be taken into consideration as being an instrument for the interpretation of the Treaties".<sup>23</sup> As such, the Decision's operative parts will be legally binding under international law, under the conditions prescribed in the 1969 Vienna Convention on the Law of Treaties.<sup>24</sup> The fragility of this regime lies in the fact that if the Court of Justice is called to rule on a conflict between international law and existing EU law, it may give preference to the latter.<sup>25</sup> However, because the Decision supplements and interprets the existing EU treaties, it is

<sup>21</sup> Cf. Articles 288 TFEU (legal acts of the institutions of the Union) and 15 TEU (list of institutions).

<sup>22</sup> Such a construction is not without precedence but follows the examples set by the heads of state or government meeting within the European Council in Edinburgh in December 1992 (to accommodate Danish concerns about the definition of the *ambit ratione personae* of the provisions of EU law referring to the concept of national), and in Brussels in June 2009 (to make sure that Irish concerns relating to, inter alia, taxation policy, the right to life, education and the family, and Ireland's traditional policy of military neutrality, would remain unaffected by the entry into force of the Treaty of Lisbon). In each case, the Decision was followed up by a Protocol added to the Treaties on the conclusion of the Amsterdam Treaty and the Accession Treaty with Croatia, respectively.

<sup>23</sup> Para. 3 of the Decision. The agreement will need to be lodged with the Secretariat of the United Nations in accordance with Article 102 of the UN Charter.

<sup>24</sup> Article 11 (expressions of consent to be bound) and 31(3)(a) (prerogative of signatories of treaties to adopt a subsequent act in simplified form to interpret the treaties).

<sup>25</sup> See, e.g., P.J. Kuijper et al., *The Law of EU External Relations*, 2nd edition (Oxford University Press, 2015), Chapter 12 (The status of international law in the EU); and B. Van Vooren and R.A. Wessel, *EU External Relations Law* (Cambridge University Press, 2014), Chapter 7 (EU law and international law).

supposedly not contradicting them.<sup>26</sup> Thus, the risk of the Court overturning the deal is limited, especially in view of its jurisprudence in which the Court declared that the Decision “has to be taken into consideration as being [an instrument] for the interpretation of the [Treaties]”.<sup>27</sup> As a final point in this regard, it should be remembered that the entire construction depends on the Decision actually taking effect, i.e. on the same date as the British government informs the Secretary-General of the Council that the UK has decided to remain a member of the EU.<sup>28</sup>

As mentioned above, some parts of the Decision (for instance on limiting child benefits, introducing an emergency brake on in-work benefits, and tightening up rules on marriages of convenience) will have to be passed into separate secondary EU legislation before they can take legal effect. This would be done under the ordinary legislative procedure, which prescribes that a simple majority of the European Parliament needs to approve the legislative proposals made by the Commission.<sup>29</sup> It is for this reason that Cameron tried to secure the support of the leaders of the Parliament’s three biggest political groups (EPP, S&N, and ALDE) in the days before the European Council meeting, and that three EP negotiators (‘sherpas’) participated in the summit negotiations. Notwithstanding this, the exact nature of the legislation – including possible amendments – cannot, of course, be pre-empted.

In this context, it is worth adding that also non-legislative action will be required to implement parts of the agreement. For instance, the Commission’s intention to develop clarifications on to whom national governments can refuse entry or remove from their territory will be laid down in a Communication providing guidelines on the application of Union law on the free movement of Union citizens. Another case in point is the Council’s acceptance to improve the management of the banking union by way of a decision that will supplement Council Decision 2009/857/EC.<sup>30</sup>

Yet other parts of the Decision will have to be incorporated into the EU Treaties at the time of their next revision.<sup>31</sup> Arguably, a future round of treaty revision will have to wait until after the referendum in the UK, the presidential elections in France in May 2017 and the next federal elections in Germany, in October of that year. It may be presumed that the extent of the changes to the economic governance and overall direction of integration of the Union envisaged by the New Settlement, as indeed additional amendments that other member

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<sup>26</sup> Again, the European Council is more unequivocal in its (political) conclusions, para. 3(iii): “the content of the Decision is fully compatible with the Treaties”.

<sup>27</sup> Ruling of the Court on the nature of the Edinburgh Decision in para. 40 of the Rottmann case (C-135/08, ECLI:EU:C:2010:104).

<sup>28</sup> Section E of the Decision, para. 2.

<sup>29</sup> Such proposals will only be drawn up following the taking effect of the Decision, i.e. not before the UK has decided to remain in the EU.

<sup>30</sup> See the Draft Council Decision on specific provisions relating to the effective management of the banking union and of the consequences of further integration of the euro area (Annex II).

<sup>31</sup> With regard to future EU enlargements, the Decision notes that “appropriate transitional measures concerning free movement of persons will be provided for in the relevant Acts of Accession to be agreed by all Member States, in accordance with the Treaties. In this context, the position expressed by the United Kingdom in favour of such transitional measures is noted.”

states,<sup>32</sup> the Commission and the European Central Bank may wish to introduce, will trigger the ‘ordinary revision procedure’ of the Treaties laid down in Article 48(2-5) TEU.<sup>33</sup> This revision procedure prescribes a wholesale Convention akin to the one that prepared the EU Constitutional Treaty prior to a ‘normal’ intergovernmental conference. As a consequence, those future negotiations will probably consider a host of issues that go well beyond the scope of the present deal. It should also be noted that, if and when the European Council agrees to them, those amendments to the Treaties will only enter into force after being ratified by all the member states in accordance with their respective constitutional requirements. As with previous rounds of treaty revision, the outcome of these processes cannot be guaranteed in those countries that put the treaties to the test in national referenda.

It is highly doubtful that, at the time of his Bloomberg speech, Cameron had envisaged himself spearheading a process of deeper EU integration in which the UK would be only one of 28 equal players, weakening the claim to exceptionalism that has been central to the Prime Minister’s playbook. What is more, Cameron should have known that some of the EU reforms he demanded could only be implemented through treaty reform and that it was thus always going to be hard to fulfil his pledge of organising an in/out referendum before the end of 2017.

### **A state of limbo until the referendum**

Presenting the deal to the assembled press corps in Brussels late on Friday night, David Cameron unapologetically chose to address himself primarily to a British audience: “I do not love Brussels. I love Britain.” He claimed to have achieved “the best of both worlds” and spoke of the EU largely as an enrichment opportunity for Britons; a body the UK could benefit from or ignore depending on its usefulness. His European peers – who have spent weeks, if not months, on these negotiations for the UK – must have swallowed hard on hearing the Prime Minister’s combative tone. Then again, the other leaders acted in their national interests too. Their hard-headed collective decision was that it would be better for their countries and for the EU as a whole if the UK stayed in the European Union. In the end, they gave Cameron what he wanted: a decent deal on narrow but nonetheless key issues.

As such, the heads of state or government of the 28 member states closed an important chapter in a long story of rampant speculation about a British exit from the EU. The referendum of June 23rd will surely prove to be the endgame, when it is the British people who decide whether they want to remain in the EU or leave. In this context, one cannot

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<sup>32</sup> See, e.g., the Joint Communiqué – “Charting the way ahead. An EU Founding Members’ initiative on strengthening Cohesion in the European Union”, adopted by the Ministers of Foreign Affairs of Belgium, Germany, France, Italy, Luxembourg and the Netherlands on 9 February 2016 in Rome. The text is available at [www.esteri.it/mae/it/sala\\_stampa/archivionotizie/comunicati/2016/02/joint-communiqué-charting-the-way.html](http://www.esteri.it/mae/it/sala_stampa/archivionotizie/comunicati/2016/02/joint-communiqué-charting-the-way.html).

<sup>33</sup> Given the extent of the proposed amendments to the Treaties, it is unlikely that the European Parliament would give its consent to the European Council deciding by simple majority not to convene a Convention pursuant to Art. 48(3), second para. TEU.

escape the feeling that the EU deal to avoid Brexit is neither a crowd pleaser nor a vote winner.

Prime Minister Cameron will now have to focus on the real priorities for Britain and make the case that its security and socio-economic interests are better served within the European Union rather than outside it. He can make that case, if only by referring to the vast body of evidence and analysis that was gathered in the Balance of Competences Review conducted by Whitehall itself. With a positive message about the value added and multiplier effects the EU provides to the UK, he ought to be able to convince a part of the 19% of the voters that are still undecided.<sup>34</sup> It is more likely though, that 'Project Fear' will dominate his pre-referendum campaign: the fear of the unknown. Indeed, the 'Leave' campaign has so far been unable to come up with a credible and easily understandable 'Brexit' scenario.<sup>35</sup> Arguably, there is no better alternative to the UK's already 'specific status' within the EU. A vote for the 'Leave' campaign would indeed be a leap in the dark.

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<sup>34</sup> For a recent poll, see <http://thetim.es/1mhlhU>.

<sup>35</sup> See the critical analysis by M. Emerson, "The Final Brexit Question: The known Plan A to Remain, or the unknown Plan B to leave", CEPS Working Document No. 418, February 2016.



## Appendix: EPIN Members' National Position Papers

The papers in this appendix give the gist of the positions taken by our 'mock negotiators' on each of the four EU reform demands during the simulation exercise organised by CEPS and the Bertelsmann Stiftung in Brussels in October 2015.<sup>36</sup> The papers were fine-tuned after our event and the publication of the British Prime Minister's letter to European Council President Tusk on 10 November 2015. Positions have evolved in subsequent weeks and become more diverse. The papers contained in this appendix do not reflect the national positions taken by the heads of state or government at the European Council summit of 18/19 February 2016.

Moreover, as the participants to our simulation exercise are members of think tanks affiliated to the European Policy Institutes Network (EPIN), and are not part of any government, the papers contained in this appendix do not 'represent' the official position of the governments concerned. Nevertheless, given the expertise, analysis and personal calculation of the analysts who cooperated in the project, the positions set out here are fairly close approximations to the actual official positions. Whereas this approximation effort has obvious shortcomings, it also has the advantage of presenting positions in a more direct way than diplomatic etiquette would normally allow.

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<sup>36</sup> The outcome of the mock European Council negotiations were laid down in 'conclusions' and published as an appendix to S. Blockmans and S. Weiss, "Will Cameron Get What He Wants? Anticipating reactions to Britain's EU reform proposals", CEPS Commentary, 29 October 2015.

## 1. Bulgaria

*Antoinette Primatarova, Programme Director, Centre for Liberal Strategies, Sofia*

### General attitudes

Attitudes towards the EU in Britain and Bulgaria could not be more different. According to the spring 2015 Eurobarometer poll, 61% of Bulgarians tend to agree that more decisions should be taken at EU level, whereas 58% of Britons tend to disagree with this statement. Moreover, 56% of Bulgarians tend to trust the EU while 55% of Britons tend not to do so. Britain's cherished budgetary rebate and opt-outs from Schengen, the eurozone, some justice and home affairs matters, and a desire for yet more exceptionalism are in stark contrast with Bulgarian fears of any changes to the functioning of the EU that might consolidate a multi-speed Europe and doom Bulgaria to a second-class EU membership forever.

Ordinary Bulgarians' trust in the EU and its institutions are the reverse side of extremely low levels of trust in national politicians and institutions. A different rationale lies behind the preference of experts and politicians for more integration, yet also for more communitarian rather than intergovernmental solutions within the EU. In the framework of the pre-accession preparations and of the membership negotiations, the 'Euro-socialisation' of decision-makers and politicians was mainly the result of intense contacts with the European Commission. The lesson learned was that Bulgaria's interests are better served when the Commission is closely involved. The Commission rather than any individual member state was perceived to be Bulgaria's best friend in the framework of the negotiations.

The general Bulgarian preference for more communitarised policies is also based on the pragmatic assessment that intergovernmental cooperation is beneficial for big countries, whereas small and medium-sized countries have a better chance of voicing their concerns and having them heard through the communitarian approach.

Euroscepticism is quite marginal in Bulgaria's political landscape. Political calculations that it would be easy to instrumentalise traditional historical and cultural relations between Bulgaria and Russia for Eurosceptic purposes were proved wrong by the decreasing popularity of the vocal Eurosceptic party Attacka, which has a strong bias towards Putin and links with his regime.

Despite their fundamentally different attitudes towards the EU and further EU integration, relations between Bulgaria and the UK are very good. There can be no doubt that Bulgaria would like the UK to remain within the EU. This has been publicly stated after high-level contacts in recent months that had (at least partly) British demands for EU reform on the agenda.

Prime Ministers David Cameron and Boyko Borisov held a meeting on the fringes of the 25-26 June 2015 European Council. Borisov's press office reported afterwards that Bulgaria was

in favour of a strong UK in the framework of a strong EU.<sup>37</sup> Finding solutions to the issues raised by the UK was considered to be of immediate importance to Bulgaria. Borisov was also reported to have expressed support for the completion of the single market in the areas of services, energy and the digital market. With regard to the sensitive migration topic, the Bulgarian prime minister shared his opinion that a regulation could be applied to the British social security system that could limit the so-called ‘benefit tourism’ in the country.

Yet the most substantive, bilateral high-level contact on Britain’s EU reform agenda was the 16 June 2015 meeting between the UK foreign secretary and Bulgaria’s foreign minister in London, the second one for Philip Hammond and Daniel Mitov in 2015. The first meeting in January created the impression that the UK’s concern about benefit tourism had the potential for controversy but it also triggered Mitov’s to publicly state that he could not imagine a European Union without the United Kingdom. In their joint June statement,<sup>38</sup> the two ministers showed general agreement on virtually all relevant issues on the UK’s EU reform agenda.

One of the biggest UK concerns – migration – was reportedly discussed with mutual understanding for the two rather different national positions, such as the potential for abuse of the UK’s welfare system from the British perspective, and any changes that would put into question the free movement of people to work from the Bulgarian perspective (Bulgaria is not alone in considering the fourth freedom a ‘red line’).

The two ministers agreed “on the need to develop an EU that is more competitive, democratically accountable and fair to all member states, whether part of the euro or not”.

Last but not least, the two ministers expressed their governments’ commitment to

- complete the single market in services (including financial services), digital technologies and energy;
- reduce the regulatory burden on business, especially small and medium-sized enterprises; and
- finalise ambitious free trade agreements, including the EU-US free trade agreement, and to communicate its benefits.

David Cameron’s January 2013 pledge to hold a referendum on the UK’s EU membership resulted in more public debate and media reporting in Bulgaria than the effective steps towards the referendum in the wake of the Conservative Party’s May 2015 election victory. Between January and November 2015, Brexit was overshadowed in Bulgaria by the Ukrainian crisis, Russia’s geopolitical game concerning the South Stream pipeline project, the potential danger of a Grexit and finally the refugee crisis in the Mediterranean.

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<sup>37</sup> See Sofia News Agency, “Bulgaria Could Rely on British Support for Consolidating Regional Energy Security”, novinite.com, 25 June 2015 ([www.novinite.com/articles/169458/Bulgaria+Could+Rely+on+British+Support+for+Consolidating+Regional+Energy+Security](http://www.novinite.com/articles/169458/Bulgaria+Could+Rely+on+British+Support+for+Consolidating+Regional+Energy+Security)).

<sup>38</sup> See “Foreign Secretary hosts Bulgarian Foreign Minister Daniel Mitov”, [www.gov.uk](http://www.gov.uk), 16 June 2016 ([www.gov.uk/government/news/foreign-secretary-hosts-bulgarian-foreign-minister-daniel-mitov](http://www.gov.uk/government/news/foreign-secretary-hosts-bulgarian-foreign-minister-daniel-mitov)).

Cameron's 11 November 2015 speech was briefly mentioned by Bulgarian media but it did not trigger comment about what the Bulgarian official position might be. There are still no explicit Bulgarian views on British reform demands, except the general one that they should be accommodated without treaty changes – as treaty changes are perceived as opening Pandora's box.

Bulgarian and British officials meet regularly in the process of preparing for the EU trio presidency in 2017–18, but the British referendum is not on the agenda of these meetings. The UK Foreign Office has given its Bulgarian and Estonian partners assurances that the UK's involvement in the EU trio will not be affected by the referendum, whatever the outcome might be. Bulgarian diplomats and officials do not expect to play a central role in the negotiations on British EU reform demands.

### Competitiveness

The competitiveness component of British demands for EU reform seems to have support all over the Union and Bulgaria is no exception. The building of a European Energy Union is not really an issue on the British competitiveness agenda, but it is definitely an issue of vital Bulgarian interest, in terms of both competitiveness and security, and Bulgaria will hardly miss the opportunity to try to shift it up to a high priority on the broader EU reform agenda. It came as no surprise that a brief media report about the Cameron–Borisov meeting in June 2015 was entitled “Bulgaria Could Rely on British Support for Consolidating Regional Energy Security”.<sup>39</sup>

### Sovereignty

There is no official document stating that a ‘United States of Europe’ is the desired end state of European integration for Bulgaria, but there can be no doubt that Bulgaria belongs to the integrationist rather than the *souverainiste* camp in the EU. Bulgaria's preference for more integration is very pragmatic and is clearly voiced with regard to profound concerns about energy security, guarding the EU's external borders and coping with the refugee crisis. On these three issues, Bulgaria is firmly in favour of common European solutions and policies. Thus, Bulgaria is supporting the development of a European Energy Union, yet also the enforcement of Frontex and solidarity in handling the refugee crisis. With regard to the challenge of integrating refugees with a different culture and religion, Bulgaria has concerns similar to those of the Visegrad countries, but as an external border of the EU with limited resources it realises the benefits of addressing the guarding of borders and accommodating refugees at the European level. As a result of these pragmatic considerations, Bulgaria is positioning itself in quite a different way from both the Visegrad countries and Romania; the country is neither opposing the redistribution quotas nor is it trying to trade their acceptance for aspired accession to the Schengen area.<sup>40</sup>

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<sup>39</sup> See Sofia News Agency (2015), op. cit.

<sup>40</sup> Upon accession in 2007, Bulgaria was planning to join the Schengen area in 2011. The Commission's assessment is that Bulgaria does fulfil the technical criteria for joining Schengen, but some EU member

The pragmatic integrationist mood in Bulgaria is the backdrop for understanding that the country does not have any problem with the phrase 'ever closer union' or trends towards deeper integration. While having no desire to remove the phrase from the Lisbon Treaty, Bulgaria can hardly be expected to object to some kind of opt-out for the UK; such a solution would be perceived as an issue of rhetoric rather than substance and thus as not jeopardising Bulgaria's own interest in further integration.

With regard to British demands for a greater role for national parliaments, Bulgaria cannot be expected either to oppose or to actively support them. The country has rather brief experience as an EU member state and in this short period it has been the government that has played the mayor role in relations with the EU. Bulgarian MPs quite often rely upon the MFA (Ministry of Foreign Affairs) to prepare 'their' positions with regard to EU policies. For Bulgaria, a 'red card' system would not imply further democratic legitimacy, but rather a potential danger of allowing other member states with strong parliaments to block the Commission's legislative proposals. As regards an eventual 'green card' system, the Bulgarian parliament can hardly be expected to become proactive in the case of its introduction.

The spectre of a two-speed Europe has haunted Bulgarians from the very beginning of the EU accession process. Before the EU committed itself to the fifth enlargement, several ideas were floated about how to integrate the Eastern European candidates sooner rather than later but without granting them full rights. Provisions that make Schengen and eurozone accession conditional upon future assessment of the new member states' readiness are of course a kind of two-speed Europe, if just a temporary solution.

### **Economic and monetary integration**

Bulgaria is not yet part of the eurozone, but has no opt-out on the euro like the UK and Denmark. Being at present a 'euro-out', Bulgaria has concerns about the impact of decisions taken exclusively by eurozone countries and would support any safeguards that guarantee that it would not become subject to decisions on European economic policy without being part of the decision-making process. Recent debates in eurozone countries about the need to deepen integration do revive fears in Bulgaria that the eurozone countries might embark on a road that could end in changing accession criteria and thus less cohesion within the EU. The October 2015 proposal of the Luxembourg EU presidency to consider promoting a social dimension in the euro area, and to introduce special meetings of the Employment, Social Policy, Health and Consumer Affairs Council in a format of eurozone members, triggered immediate criticism from all non-eurozone member states, including Bulgaria. The stabilisation of eurozone countries should definitely not happen through eurozone caucusing and discrimination of future members. Bulgaria, as a prospective member of the eurozone, does not share all British concerns, but prior to membership Bulgaria will no doubt support

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states are making Schengen accession conditional upon more substantial progress within the framework of the Cooperation and Verification Mechanism, which is monitoring reform of the judiciary system.

Cameron's demand that "[t]axpayers in non-Euro countries should never be financially liable for operations to support the Eurozone as a currency".<sup>41</sup>

### **Free movement of labour**

In 2013, the British media subjected Bulgaria (and Romania) to relentless reporting of an expected influx of immigrants and a potential drain on the British welfare state following the end of free movement restrictions for the two countries on 1 January 2014. The UK Independence Party, in particular, fuelled the fire. This portrayal of Bulgaria in British mass media throughout 2013 was mirrored by angry media reporting in Bulgaria on British efforts to curb both the rights of Bulgarian students in the UK and the free movement of potential Bulgarian workers. However, reporting in 2013 never connected these concerns to Cameron's aims of EU-wide reform, a renegotiation of UK membership or an in/out referendum. Statistics in 2014 and 2015 did not bear out British fears of a great Bulgarian and Romanian invasion. Bulgaria and Romania are no longer the only British concern with respect to migration, so it is clear that whatever the British demands are, there will not be exclusive targeting of Bulgarians and Romanians. Free movement of labour is a red line for Bulgaria as it is for all other member states, both new and old. But since the free movement of Bulgarian workers started as late as 1 January 2014, and there are fewer Bulgarian workers receiving in-work and out-of-work benefits than other Central and Eastern European workers (enjoying that freedom since 2004). The possible cutting of these benefits has not therefore become an issue for debate or negative public opinion in Bulgaria. Benefit tourism, as far as it exists, seems to be regarded as a problem that could easily be solved through reform of the UK's social system. It thus remains up to the British to achieve reform in a way that would not discriminate against any EU citizens. There are no official proposals to postpone the free movement of labour for prospective new members of the EU until their economies converge more closely with those of existing member states, but given Bulgaria's interest in enlargement towards the Western Balkans, Bulgaria should resist such proposals.

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<sup>41</sup> Letter of David Cameron to Donald Tusk, 10 November 2015.

## 2. Czech Republic

*Věra Řiháčková, Senior Research Fellow, EUROPEUM Institute for European Policy, Prague*

### **Economic governance**

The Czech Republic shares the UK's view that decision-making at the EU level needs to be inclusive and that the positions of non-eurozone members should also be taken into account. At the same time, it is necessary to bear in mind that thanks to the UK's permanent exemption from the obligation to join the eurozone, it is in a different position from the Czech Republic. So while it is acceptable to consider certain safeguards for the UK (as a permanent non-eurozone member), such measures can neither be incorporated into the eurozone architecture nor paralyse further integration of the eurozone, because the Czech Republic will become a member of the eurozone sooner or later. The Czech Republic does not support the possibility for non-eurozone members to veto further development of the eurozone, i.e. through the so-called 'emergency brake'.

### **Competitiveness**

The Czech Republic understands that the UK is not requesting a renegotiation of its position in the EU in this area, but rather aims to raise issues that are important for the whole EU. Competitiveness has long been a priority for the Czech Republic (dating back to its 2009 EU presidency), and it considers the UK's reform requests in this area the least controversial. At a general level, the Czech Republic supports the proposals that aim to deepen the single market, active trade policies and better regulation. The detailed position of the Czech Republic, however, depends on the substance of the specific proposals. It welcomes improvements to the current state of legislation, for example through the Better Regulation Agenda, and the conclusion of free trade agreements with third countries.

### **Sovereignty**

The UK requests a legally binding agreement stating the UK's exemption from the provision on ever closer union (among the peoples of Europe) and suggests enhancing the system for involving national parliaments in EU decision-making through the so-called 'red card'. For the Czech Republic, the complete removal of the principle of ever closer union from the Treaty is not acceptable. At the same time, the Czech Republic sees any general opt-out for the UK from ever closer union that would require a change to EU primary law as very problematic, since removing the principle of ever closer union would have serious consequences for the overall concept of the EU. The Czech Republic awaits suggestions on how to tackle the issue without the need to go beyond the existing framework of EU primary law. The country has traditionally favoured an enhanced role for national parliaments in EU decision-making and supports their proactive approach and right to initiative (the so-called 'green card'). Yet the Czech Republic does not favour an increase of their blocking potential. Furthermore, such an increase in the powers of national parliaments would, in effect, mean that they would become another parliamentary chamber in the EU's legislative process. Once

again, however, the Czech Republic is waiting for specific proposals on the suggested mechanism of the red card.

### **Immigration**

Any discriminatory measures aimed at limiting the free movement of persons and the right to residence are unacceptable to the Czech Republic. This is the most sensitive area of the UK's proposals. The Czech Republic calls for a distinction to be drawn between the free movement of EU citizens and that of third-country nationals, which is often conflated in the UK. The free movement of persons/labour – citizens of the EU – is a cornerstone of the single market recognised by all member states and a long-awaited achievement for the new member states following the seven-year transition period after the 2004 accession. The right to live and work anywhere in the EU is therefore important for the Czech Republic, also in light of its historical experience before 1989. For the majority of Czech citizens, the free movement of persons is the main benefit of EU membership. It is necessary to distinguish between measures aimed at preventing its abuse and measures limiting free movement. In the area of preventing abuse, the Czech Republic may support certain, very concrete initiatives. At the same time, it cannot support any measures limiting the social benefits of EU citizens who are entitled to worker status, as the non-discrimination principle is anchored in EU primary law.



### 3. Denmark

*Jan Høst Schmidt, Senior Advisor, Think Tank EUROPA, Copenhagen*

#### **General attitudes**

The huge flows of asylum seekers and immigrants into Europe present many challenges for the EU and its member states. The present de facto breakdown of the Schengen Agreement and the Dublin Regulation poses considerable risks to fundamental EU principles, such as free movement and solidarity among member states. This critical period for the European project follows a period of poor economic performance of the EU economy and gives fresh impetus to popular Euroscepticism.

In this situation, we do not need a split of the EU; rather we need to reform the EU to tackle the challenges. Denmark therefore wants to find constructive solutions, which at the same time can reform the EU and can accommodate some of Britain's wishes for reforms, as long as these changes can strengthen the functioning of the EU and increase its legitimacy for EU citizens.

The reforms must take place within the existing Lisbon Treaty. We would not be able to explain to European citizens why we are engaging in complicated discussions on treaty changes (with possible multiple demands for changes), which risk paralysing the EU institutional system right now, when we need to focus on solutions to solve the asylum and immigration problems and bring more growth and jobs to EU citizens.

Denmark believes that we should be able to find solutions that will improve the functioning of the EU through reforms of secondary legislation and more focus on implementation of already agreed EU legislation, not least in the area of the single market. In some cases, we could work through declarations by all member states, or in very exceptional cases through protocols to the Treaty on behalf of the UK to be adopted by the member states according to their national procedures.

#### **Sovereignty**

Denmark subscribes to the conclusions on the concept of ever closer union of the June 2014 European Council. The concept allows for different paths of integration for individual member states. Those that so wish can deepen integration in specific areas while respecting the wishes of those like the UK that do not want to deepen any further. The existing set-up of the Treaty can be applied on a case-by-case basis at the request of member states in specific areas. Such agreements can be settled through declarations and in some cases by specific protocols to the Treaty.

For Denmark, ever closer union or more integration is not an end in itself. The EU should only act when there is clear added value in such action compared with what the member states can do on their own. The EU should be big on big things and small on small things. Denmark would like to look at ways to reinforce the principle of subsidiarity in practice and would also be willing to seriously consider possibilities to roll back existing EU legislation.

Denmark welcomes the European Commission's Better Regulation Package, with its rollback of existing legislation in areas where the legislation is no longer fit for purpose.

The EU is a union of member states. To ensure the democratic legitimacy of EU decisions, it is important to ensure the involvement of national parliaments in full respect of the Treaty and the roles of the Commission and the European Parliament. Denmark is in favour of giving national parliaments a stronger, but positive role in EU decision-making. National parliaments should have the possibility to comment on the Commission's proposals, and if a majority of national parliaments have similar comments, Denmark would invite the Commission to 'change or explain' its policy proposals. This procedure could also apply to existing legislation.

Furthermore, national parliaments may contest the compliance of draft EU legislation in line with the principles of subsidiarity and proportionality. This procedure is a clear, concrete, existing tool for national parliaments to intervene in the EU legislative process. Denmark welcomes the Commission's intentions to investigate ways to strengthen this procedure and the involvement of national parliaments.

### **Competitiveness**

The EU needs to make a more decisive contribution to increasing economic growth and job creation in the member states. It is an essential task for the Union even if the final responsibility for economic policy rests with the member states, but increased growth and jobs would be fundamental to EU citizens' support for the EU.

The single market is at the very core of the EU project. A better functioning single market will improve the EU's competitiveness and the wealth of our societies. In general, we need to push for much better implementation of existing legislation, faster decisions on common standards, and a much more level playing field for businesses and consumers in the single market. This requires the Commission and the member states to devote more resources to the implementation of legislation, to competition policy, and to a quicker and better follow-up of complaints from business and consumers. The latest suggestions from the Commission to improve the single market are a step in this direction, but we need a quantum leap forward, and only a redirection of EU and national resources to back this up will provide the necessary momentum.

In the area of services, the Digital Single Market and the energy market, we need to push harder for faster reforms, which can bring down remaining barriers and allow for rational common solutions. Denmark strongly supports the Commission's efforts to bring about agreement on various bilateral trade and investment agreements, not least the Transatlantic Trade and Investment Partnership with the US.

The Better Regulation Package proposed by the Commission is an important element in the process to improve competitiveness. We need improved evaluation of EU legislation, both ex ante and ex post, with review clauses and possibilities to roll back legislation that is no longer fit for purpose.

## Economic and monetary integration

Decisions concerning all member states, especially decisions concerning the functioning and the development of the single market in all its aspects, should be taken by all member states according to the rules of the Treaty. Member states sharing the euro as a currency may face specific common challenges, interests and responsibilities, which may call for the further integration of these member states. This need for possible deeper integration should be recognised by non-euro countries.

The process towards a deeper Economic and Monetary Union (EMU), on the other hand, should recognise the legitimate interests of the non-euro member states. As indicated in the *Five Presidents' Report: Completing Europe's Economic and Monetary Union*, the process towards deeper EMU is open to all member states.<sup>42</sup> The process should be transparent and preserve the integrity of the single market in all its aspects. The existing Treaty provides, in Denmark's view, sufficient room for finding the right balance between the interests of both the euro-area countries and the non-euro member states.

## Free movement of labour

The free movement of goods, services, capital and labour are pillars of the single market. So is the principle of non-discrimination on the basis of nationality. Yet the Treaty recognises member states' rights to lay down the fundamental principles for their national social security systems. Equally, EU legislation in the area of social and employment affairs should not jeopardise the economic balance in any national social security system, as also recognised in the jurisprudence of the Court of Justice of the European Union.

At this time, and for a foreseeable future, levels of income and of social welfare among member states in the EU differ considerably. This may lead to unintended runs on richer member states' social security systems, in particular. We should therefore consider ways in which the right to social benefits for workers and their families can be better linked to residence and work for a certain period in the country in question. Secondary EU legislation should be clarified to that effect.

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<sup>42</sup> See the *Five Presidents' Report: Completing Europe's Economic and Monetary Union*, by Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz, European Commission, Brussels, 22 June 2015.

## 4. France

Vivien Pertusot, Head of Brussels Office, Institut français des relations internationales (IFRI)

### Competitiveness

France supports a stronger role for the EU to encourage growth and employment. The past few years have indeed shown that all avenues need to be explored to restore growth to EU economies.

In light of the economic crisis, the current government has acknowledged the need to streamline regulation. Thus, it has implemented the *choc de simplification* measures, which aim to make life easier for businesses, especially SMEs. France consequently supports the efforts carried out by the European Commission through its Regulatory Fitness and Performance Programme (REFIT).

France also commends the work of the European Central Bank to support the euro. France often emphasised that the value of the euro was too high, especially compared with that of the US dollar. A cheaper euro is thus good news for companies seeking to be more competitive on the global market.

More growth and less unemployment are essential to a sustainable European economic and social model. France supports growth policies as well as structural reforms, but it also encourages the eurozone to increase the coordination of its members' economic policies. It is becoming increasingly difficult to imagine a well-functioning eurozone without stronger eurozone governance. Having a eurozone-wide discussion about how to devise better national priorities would help the whole of the eurozone.

It is also essential to bear in mind that structural reform and efforts to stick to European rules cannot be separated from discussions about Europe's social policies. Citizens need to feel that the EU is not only about sticking to rules but also about preserving our social model.

France supports the completion of the single market in energy, digital technologies and services, along with the Capital Markets Union. More work needs to be done to overcome the remaining stumbling blocks, but France is committed to moving forward.

Trade is also an important component for growth. France supports trade agreements, but it is important that the EU does not degrade its high standards to bring about the signature of new agreements.

### Free movement of labour

Free movement of persons is a fundamental pillar of the single market and of the EU more generally. France would consider it unacceptable to give away this right.

The EU rules also allow for workers to work freely in all member states. This is an important right that should not be jeopardised. The concept of non-discrimination among European citizens is embedded in the Treaties and is a fundamental principle of the EU. France would not accept it being compromised.

At the same time, France recognises that there could be room for making sure that there are no abuses of social security systems in the EU. It understands that abuses could represent unfair additional costs to a country's national budget, which is particularly problematic in times of economic crisis. For that reason, France welcomes the different rulings by the Court of Justice of the European Union to better delineate access to benefits by unemployed new migrants.

However, France refuses to limit access to in-work benefits. This would represent discrimination between nationals and EU citizens.

### **Sovereignty**

'Ever closer union among the peoples of Europe' is a bedrock principle of the European project. It has strong historical and symbolic importance. It represents the wish to bring Europeans closer and away from the tragic conflicts that poisoned the continent in the first half of the 20<sup>th</sup> century.

France is mindful of the European Council conclusions in June 2014 about ever closer union and feels that these address British concerns, as they clearly state that not all countries are destined to deepen integration.

The UK's debate on ever closer union appears slightly odd to the French, since the full sentence does not call for a sort of supranational state. Acceding to the UK's demand for an opt-out therefore does not sound reasonable.

Moreover, France has repeatedly stressed that it rejects cherry-picking. The UK already has a number of opt-outs and derogations. At some point, the question will necessarily be: Where does it end?

France does not see the need to explore new mechanisms for national parliaments. The Lisbon Treaty offers new ways for MPs to participate in the EU decision-making process. As these are relatively recent, it is more important to make sure that parliaments can make full use of such instruments first before thinking of new ones.

Another important element would be to improve inter-parliamentary cooperation. More can be done to strengthen the role of COSAC<sup>43</sup> as well as the inter-parliamentary cooperation on the Economic and Monetary Union, and on the Common Security and Defence Policy. These different forums offer interesting venues for MPs to better work with each other and coordinate their initiatives.

### **Economic and monetary integration**

France wants to strengthen the eurozone, which is perceived as the future of the EU. The government is currently working on proposals to make the euro area more ambitious and better tailored to addressing the political and economic challenges it faces.

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<sup>43</sup> The Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC).

France is therefore very cautious about any instrument that could hinder the development of the eurozone. While it acknowledges the UK's concerns that the eurozone can form a de facto majority in the Council or in the EU's agencies, France cannot accept the creation of mechanisms that could give the UK a form of veto.

France has learned a lesson from the double majority-voting system established for the European Banking Authority and will be very vigilant to avoid its extension to other policies or institutions.

Moreover, France considers that the Treaties already offer sufficient assurance to the UK that there should be no discrimination within the single market. For that reason, any legally binding mechanism is not necessary. France would, however, accept a restatement of what the Treaties already mention.

## 5. Germany

*Nicolai von Ondarza, Deputy Head EU/Europa Division, SWP Stiftung Wissenschaft und Politik, Berlin*

### General attitudes

The German government is committed to keeping the United Kingdom within the EU, but not at any cost. In particular, it will resist any proposals that undermine the fundamental principles of the EU or that are perceived as weakening the eurozone. This is the balance that shapes the German reaction to all of the individual demands by the UK government. The German government is also opposed to any form of treaty change before 2017, but is willing to contemplate an agreement that predefines amendments to the primary law after that. In this regard, however, the German government is clear that the agreement should be solely about the demands of the UK and not be mixed with other issues of EU reform, including the eurozone. Politically, while the German government is willing to talk with the UK about its reform proposals, it refuses to act as a facilitator on behalf of the UK with other member states.

### Competitiveness

The area of competitiveness is politically the least contentious of the four areas in which changes are sought. In terms of content, the majority of reform demands by the UK in this area are already in the work programme of the current European Commission and thus enjoy the support of the German government. The general aim of using EU instruments to help generate growth and jobs while increasing the competitiveness of EU member states is also strongly supported by Germany.

There are only two caveats in the area of competitiveness. On the one hand, while the EU's trade strategy, and in particular the pursuit of the Transatlantic Trade and Investment Partnership (TTIP), enjoys strong support from the German government, it is heavily contested by the German public. This dissent is reflected by some political parties; the Social Democratic Party, for instance, has joined in criticism of the investor protection instruments proposed for TTIP and already included in other EU trade agreements. If TTIP concludes during the negotiation period with the UK – which is unlikely but could happen if the latter negotiations are further extended – there could thus be resistance within parts of the German government. In the end, however, the German government should still support the conclusion of TTIP if it is possible.

On the other hand, despite the general agreement with the UK regarding the deepening of the single market, there are substantial differences of interest regarding specific legislation. Examples of this are the German protection of its requirement for professional certifications in certain services sectors, which the UK criticises as hampering the free flow of services, and German reluctance to reform copyright in the Digital Single Market. Germany will therefore insist on keeping the agreement on the single market at a general level and not predefine elements for specific legislation.

## Sovereignty

The second area of demands, concerning sovereignty, is more contentious. First, the UK's demand to end its obligation to participate in 'ever closer union' is regarded quite sceptically by the German government. Its support here depends on the implementation. A formal, individual opt-out for the UK is deemed highly dangerous to the EU, as it would open the door for other member states (such as Hungary or Poland) to join this opt-out, thus fracturing the EU. Yet there is openness to following up and strengthening the declaration by the European Council of June 2014 that ever closer union does not mean that all member states have to join all integration projects. This wording and the general application of the phrase are seen as both securing the integrity of the EU and meeting the UK's demand. A more binding legal form for this clarification should also be acceptable to the German government.

The demand for a 'red card' for national parliaments is not supported by Germany. Both the German government and the major parties in the Bundestag see the main role for national parliaments in the EU as that of controlling their governments; thus, they refuse to give national parliaments a veto on EU legislation. The main argument is that such a veto could hamper the already complicated decision-making process at the EU level. However, the aim of strengthening national parliaments does not constitute a red line, as long as the quorum needed for a 'yellow card' (that is, at least a third of national parliaments) is retained. The German government would be most open to an agreement with the European Commission that it will take all yellow cards fully into account. The German government is also sceptical about granting national parliaments a 'green card' to initiate EU legislation, as long as such a right of initiative is not equally granted to the European Parliament.

Finally, the UK's demands to have its existing opt-outs in justice and home affairs confirmed and to reinforce the principle of subsidiarity are acceptable to Germany.

## Economic and monetary integration

The German government fully respects the UK's opt-out from the common currency, but is very critical of any new instruments that would give non-eurozone members co-decision powers on eurozone matters or increase their powers in normal EU decisions. The British demands on economic governance are therefore highly contested by Germany, albeit to a different degree.

First, concerning the call for establishing the EU as a multi-currency union, Germany regards the current rules of the Treaty, which grant a permanent derogation to the UK and Denmark, as fully sufficient, thus already establishing that it is their choice to eventually join the eurozone or not. Hence, there is no need to specify this in the Treaties. Additionally, it would open up other difficult questions, such as whether the – politically not enforced – commitment by other member states (for example, Poland) to eventually join the eurozone would be abolished.

Second, in principle the German government is open to the notions that the integrity of the single market should be protected and that non-eurozone members should not be financially liable for operations to support individual eurozone countries. In both cases, however, the



implementation is crucial. Instruments such as those increasing the transparency of eurozone decision-making are acceptable and are worked on, while any participation of non-eurozone members in eurozone decision-making is not acceptable. Rules safeguarding the integrity of the single market should be enforced through the Court of Justice of the European Union, while the eurozone should retain its ability to undertake the swift decision-making that has been so crucial in recent years. In this sense, a clarification of the Treaties reiterating that decisions of the eurozone should not discriminate within the single market could be part of a compromise.

Finally, from a German point of view there is still a need to clarify the UK's proposals for ensuring its goal that any issues that affect all member states must be discussed and decided by all member states. While supporting this general principle, the German government rejects any instruments that would give non-eurozone countries a bigger say or reduce the requirements for blocking majorities within the single market, such as the introduction of a new 'double majority' or an adjustment of the so-called 'Ioannina-bis mechanism'. This rejection also includes the proposals for an emergency brake that would transfer decision-making within the single market to the European Council, thereby effectively re-introducing unanimous decision-making.

### **Free movement of labour**

The German government welcomes the UK's continued support for the free movement of people, which it considers to be one of the cornerstones of the single market and the EU. Within this context, Germany also supports the UK with regard to reducing the abuse of free movement, as long as it is proportionate and does not effectively reduce EU citizens' right to free movement.

Nevertheless, the UK's demand to introduce a four-year transition period applying to the receipt of in-work benefits by EU citizens is regarded as infringing the general principle of non-discrimination and is thus not compatible with the single market sought by both Germany and the UK. There is willingness to talk with the UK and other EU partners about possible solutions that address the British government's objectives without infringing the principles of free movement and non-discrimination, but there is currently no solution on the table acceptable to the German government.

## 6. Greece

*Filippa Chatzistavrou, Research Fellow, ELIAMEP, Athens*

### Sovereignty

The 'ever closer union' concept is one of the founding principles of the EU. The discussion thus concerns a general provision. Greece could raise significant legal and political concerns as far as the possibility to amend a general provision of the Treaty.

Greece's European policy, in particular since the 1990s, has always placed the country firmly in the pro-federalist camp. The outbreak of the sovereign debt crisis has spurred debates about European integration, especially in relation to monetary and economic integration. Despite the crisis, Greece would like to remain in the inner core of the EU. Regardless of the slight decline in public support for integration, Greece continues to be among the most pro-integrationist countries in the EU. After five years of deep recession, a large majority of the political parties support further integration, especially in the following fields:

- deepening Economic and Monetary Union (EMU) (a debt mutualisation scheme, a plan for economic governance and new policies for redistribution);
- setting up an EU investment policy;
- harmonising EU immigration and asylum policies;
- establishing a common policy on the management of external borders; and
- strengthening the employment and social aspects of the Europe 2020 strategy.

Greece may express the fear that any exemption from ever closer union risks facilitating both voluntary and forced opt-outs. Amendments such as institutionalising an (individual) opt-out mechanism or allowing member states to opt out of a general principle of the EU could jeopardise integration as a positive and framing process.

Under the EU Treaties the UK enjoys significant opt-outs or discretionary opt-ins of large parts of policy areas. In that respect, two options seem possible.

Instead of removing the concept of ever closer union from the preamble of the EU Treaties, the alternative could consist of reformulating it in a different way: creating an ever closer union among the peoples of Europe, provided that their respective countries decide to work towards even further integration. The challenge, therefore, would be to constitutionalise a multi-speed Europe through the generalisation of differentiated integration as a positive and not a negative principle.

Another option to consider, and probably the most suitable, would be to negotiate a new protocol related to the UK opting out of the ever closer union. But in this case, in order to overcome any procedural hurdles, the protocol would have to contain provisions going into greater detail regarding the UK's participation in decision-making and the consequences of opting out for its membership and associated benefits, including an eventual opt-out from some of the benefits of EU membership.

The political legitimacy and autonomy of the parliamentary institution is a major issue in Greece. One of the effects of the Greek memoranda of understanding with its creditors was the conversion of the Greek parliament into an executive body responsible for implementing decisions imposed by the EU partners/creditors. National parliamentary credibility has taken a hit. That is the reason why the question of whether and to what extent sovereignty must be transferred to the EU from its member states is becoming a central debate within the EU.

Greece disagrees with the introduction of a 'red card'. By contrast, the introduction of a 'green card' is a proposal that Greece could greatly support. The Lisbon Treaty develops the provision on national identities, now found within Art. 4(2) of the Treaty of European Union (TEU). This article reminds us that the Union must respect the national identities of the member states, inherent in their fundamental structures, political and constitutional. In its new role, Art. 4(2) TEU bolsters the member states' claim to sovereignty and the possibility to control aspects crucial to them.

Consequently, a green card mechanism could contribute to restoring the relationship between the EU and the member states, thereby enabling the avoidance of direct fundamental conflicts and reflecting the concept of constitutional pluralism. A green card procedure could enable national parliaments to make policy suggestions and be more actively involved in the legislative process. This could restore the often-eroded legitimacy of national parliaments within the EU. This mechanism could apply in all the areas where the Treaties give the EU the competence to act. Greece could support this proposal provided that this mechanism would apply under specific conditions (a very high share of votes, strict deadlines, the European Parliament's consent as a precondition, etc.).

Nevertheless, it would be quite difficult to secure the agreement of all the member states and to ensure that this green card system would have real effect on the policy-making process. That is especially so if the idea is to copy the procedures for the 'yellow' and 'orange cards', which allow the European Commission to arbitrarily decide whether to maintain, amend or withdraw the reasoned opinions/proposals received from national parliaments. Since the Lisbon Treaty, national parliaments have had the right to review the compliance of proposed EU legislation with the subsidiarity principle through a control mechanism. So far, the overall picture of the implementation of these new provisions seems mixed. First, the subsidiarity control mechanism has been much criticised as formalistic. Second, it has been activated rarely, i.e. the yellow card procedure has been triggered twice, but the orange card procedures not at all.

### **Competitiveness**

Greece could support further initiatives to strengthen the single market provided that the European Commission undertakes a thorough review of the digital market strategy, not only evaluating the competitive concerns and their dynamics in the internal and global market, but also the potential impact on job creation in the EU economy. Still, the UK has to be able to convince member states that further liberalisation could really boost EU GDP and provide

economic and social benefits for European workers. Actually, Greece has officially declared its concerns and its opposition to the Transatlantic Trade and Investment Partnership.

Greece is aware of the importance of improving the efficiency of the European legislative process through greater transparency and openness. The Better Regulation Package came during a special political context for Greece. Greece experienced the growing influence of technocrats in political decision-making during the crisis. Indeed, there is a difference in perceptions between Greece and the UK on this matter. The problem for Greece is not so much the omnipotence of European legislation as the de-politicisation of the EU's legislative process, which is exposed to the influence of technocrats and interest groups.

Greece can share the agenda of cutting red tape and enhancing competitiveness if this new package is intended to remedy this situation. So the real question is if the measures proposed will lead to improvements in citizen involvement or will further increase experts' involvement in the European legislative process, thus reducing the political power of the EU institutions and in fact negating the intentions of the legislator. If the basic idea of this Better Regulation Package really is to make the EU more democratic and to boost opportunities and employment in SMEs then new and related initiatives will be more than welcome.

Energy is one of the most important sectors of the Greek economy. The privatisation of assets of the PPC (Greek Public Power Corporation), such as the electricity transmission network operator (ADMIE) and power units, has been seen as another way to bring capital to the government's empty coffers. Yet according to the July 2015 agreement on the third bailout plan for Greece and on the energy market specifically, Greece needs to proceed with the privatisation of the ADMIE "unless replacement measures can be found that have equivalent effect on competition".<sup>44</sup> Greece is quite reluctant to support full liberalisation of the energy sector right now. Actually, according to the EU's Third Energy Package, the bloc's liberalisation framework, full ownership unbundling of the electricity assets is optional. Greece is ready to support a plan aimed at progressively reducing the PPC's share, i.e. up to 25% by 2018 and 50% by 2020. Moreover, it is trying to find replacement measures that have an equivalent effect on competition. Greece therefore supports the transfer of the assets of ADMIE into a company that is 51% controlled by the state.

### **Economic and monetary integration**

Greece could agree that more emphasis should be placed on the concept of a multi-currency Union, where there are no first-class member states (eurozone member states) and second-class members (countries outside the euro). It considers that Britain's plans to create a new relationship with the EU can coexist with far-reaching EU Treaty changes in order to make the eurozone a more integrated Union (a eurozone commissioner, resource transfers and oversight by the European Parliament).

Greece could also support Prime Minister David Cameron's fairness agenda and the promotion of new procedural safeguards for non-eurozone members in areas of European economic governance under the conditions that these safeguards are really vital to the

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<sup>44</sup> Euro Summit Statement, SN 4070/15 Brussels, 12 July 2015.

integrity of the single market and that they do not pose any obstacle to greater integration among members of the single currency, financial market regulation or supervision. At the same time, nobody could ignore Britain's prominence in the financial sector.

But such a balance – between the needs of the wider EU single market and the requirements for a more integrated economic and banking union – is quite challenging from a legal and political point of view. A solution to satisfy the British demand could be to codify the UK's specific, legally watertight safeguards in a new 'single market protocol' that would commit the EU to a proportionate regulatory regime while safeguarding the UK from decisions taken solely by the eurozone for the other 27 member states. But the problem here is that an effective British (or more generally, non-eurozone member state) veto over EU regulatory proposals could be resisted by eurozone member states, including Greece.

To find a fair solution without being obliged to satisfy excessive requirements, EU member states could ask for a kind of new institutional safety valve for all non-eurozone countries and potential euro-outs. Instead of giving the UK a legal derogation for 'special treatment', it would probably be preferable to create a single market safeguard in relation to a eurozone-driven agenda that works for all non-eurozone countries and is in favour of a more dynamic trade agenda while protecting the integrity of the single market.

Nevertheless, Greece is still reluctant to consider the various procedural options currently under discussion, such as the application of qualified majority voting to non-eurozone member states, not only in one EU regulator, the European Banking Authority, but also in the other eurozone bodies. This reluctance also applies to the use of directives that allow for more national discretion in implementation while the majority of eurozone members agree that regulations promoting uniform enforcement are the best incentive for further enhancing EMU integration. Similarly, there is reluctance to consider the establishment of procedural mechanisms, i.e. subsidiarity tests of competence in economic policy, mechanisms mandating non-eurozone observer participation in all eurozone meetings or a last resort 'emergency brake' through which a matter of vital national interest to a non-eurozone member state could be discussed at the European Council.

### **Free movement of labour**

Greece will be very reluctant to accept limitations to intra-EU labour mobility for EU member state nationals. Given the huge increase in unemployment in Greece, these kinds of restrictions could create 'social embargos' and cause political turbulence, especially in the countries of southern Europe suffering from the economic crisis. The intra-EU labour mobility for EU member state nationals is one of the cornerstones of the EU, a fundamental value of European solidarity. According to Art. 151 Treaty on the Functioning of the European Union (TFEU), the Union and the member states, having in mind fundamental social rights such as those enshrined in the European Social Charter and in the Community Charter of Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions. This is to allow for their harmonisation while the improvement is being maintained, along with adequate social

protection, social dialogue and the development of human resources for lasting high employment and to combat exclusion.

Of course, recent EU law and the jurisprudence of the Court of Justice of the European Union determine rights to permanent residence and social benefits for non-active EU migrant workers, leading to a new observation that the Court accepts the existence of a category of EU citizens who enjoy a right of residence but have no access to minimum subsistence benefits. Greece considers that giving national authorities carte blanche to refuse any claim to social assistance by indigent EU citizens could constitute a negative turning point for Europe and may have worrying implications for the division of competences between national immigration and welfare authorities.

As one of the most pro-integrationist countries, Greece would be firmly opposed to individual opt-outs from the social *acquis*, the scope of which is already very limited. Instead of intensifying social welfare competition among EU countries, Greece is in favour of introducing new labour standards and reinforcing labour market institutions in order to bridge the social divisions exacerbated by the crisis and to fight against poverty and social exclusion. This implies establishing a social fund to aid displaced workers and strengthening social policy cooperation among member states, including the general goal of promoting improvements in the living and working conditions of workers so that an upward levelling will occur.

## 7. Ireland

*Andrew Gilmore, Senior Researcher, Institute of International and European Affairs, Dublin*

### Competitiveness

We must begin by noting that Ireland and the UK share a mutually beneficial trading partnership. About €1 billion worth of goods and services are traded between our two countries every week, and this is far from one-directional trade: in fact, the UK exports more to Ireland than it does to China, India and Brazil combined. We are the UK's fifth largest market, and more than £14 billion pounds worth of British goods and services were exported to Ireland in 2012.

Thus, Ireland and the UK have a mutual interest in issues of trade, competitiveness and removing barriers to business. Addressing the competitive disparity that has grown between Europe and other parts of the world is a priority issue, and we are pleased to see synergy between the European, Irish and British agendas on this topic.

Ireland expects to be a net beneficiary of the Transatlantic Trade and Investment Partnership once it is completed, and for that reason strongly supports bringing the deal to a conclusion, and welcomes the Council's statements in this respect.

Completing the single market is also of importance to Ireland, and we furthermore believe this to be in the interests of all 28 member states. The digital economy in particular is a vital aspect of the Irish economy, and is considered an important factor in the country's post-crisis recovery. Ireland has in recent years positioned itself as a point-of-entry into the EU market for US multinationals in this sphere, and we also hope to foster and promote home-grown digital start-ups.

A lack of regulatory harmonisation has hindered growth in the digital economy across Europe, and artificially distorted the market in favour of competing regions. Completing the Digital Single Market, then, is of special interest to Ireland, and we welcome initiatives in this regard. The recent decision to end roaming charges is an encouraging development, and we urge further progress in the coming months.

In Ireland, where SMEs have struggled since the crisis, there is a degree of sympathy for the UK's quest for EU reforms to boost competitiveness. The Irish view of this is again greatly shaped by its recent experiences, and it is felt that the removal of any impediments to economic recovery will be welcome.

However, Irish support in this area comes with a caveat. Our UK partners have had a tendency to view the EU as little more than an embellished free trade zone, but it is important in this debate to understand that there is a difference between a free trade area and a single market. It must be noted that the latter market requires institutionalised and legal means to enforce fair competition rules, and to prevent competitive distortions, and this cannot and should not be confused with red tape. If national governments or parliaments

have the power to undermine these rules, then the single market disintegrates and protectionism inevitably takes its place.

As a small state in a large union, Ireland is keen to ensure that provisions relating to fair competition in particular are not undermined by any reform initiatives.

Thus, Ireland is supportive of removing barriers to competitiveness, but hopes that it will be recognised that there are reasonable limits to the extent to which 'red tape' can be minimised.

### **Free movement of labour**

The migration issue is one of common concern for the member states. Depending on the state, however, it is clear that it raises profoundly different and difficult political and social interests, including those surrounding free movement of peoples in the single market – the foundation of mobility within the EU, and arguably the Union's greatest achievement and contemporary justification for its citizens.

As Charles Flanagan, our foreign minister, recently stated, we understand that the scale of migration into the UK, including from other member states, is a source of concern, both for the UK government and for many British people. Ireland also understands that this is contributing to a sense of dissatisfaction with the EU and with Britain's place in that Union.

Ireland itself has benefited greatly from the principle of free movement, particularly since the economic crisis. The country furthermore has a long history of emigration, which in turn has lent it an understanding and empathy for the plight of economic migrants.

From the Irish perspective, the very perception of the citizens of certain member states being treated differently from others touches a nerve deep within the EU's common ethos, and in crafting a solution to this issue it is necessary to ensure that the Treaty provisions on non-discrimination are adhered to. Provided this core principle can be respected, Ireland will be cautiously open to proposals on this topic.

Ireland welcomes recent judgments by the Court of Justice of the European Union, clarifying the competencies of the member states with respect to non-active claimants of social assistance, but further constructive engagement on the issues raised by the UK is encouraged.

In particular, proposals to address specific abuses of the system, such as welfare fraud and sham marriages, as suggested by Prime Minister David Cameron, would be acceptable from the Irish perspective. Ireland would also support reasonable measures to enhance provisions for the deportation of migrants convicted of welfare fraud, and restricting re-entry rights for the same. These are areas of common concern for the member states and can be addressed with relative ease, through a comprehensive review and amendment, where necessary, of existing legislation at both the national and European level.

On the topic of social assistance to job seekers and non-resident dependants, it is noted that the member states are already granted a degree of discretion in this regard, but a further



review of the legislation with a view to obtaining a mutually acceptable solution is encouraged.

Mr Cameron has also raised concerns in his letter regarding strengthening powers for deportation and re-entry bans for criminal migrants. This, again, is an area of common concern, and one that it is felt should be addressed by the member states.

### **Sovereignty**

Ireland welcomes the reaffirmation of the principle of subsidiarity and proportionality, as well as reasonable initiatives to strengthen this principle, and furthermore notes the synergy on this issue with the mandate of First Vice President Frans Timmermans.

Ireland is also sympathetic towards demands to tackle what some have termed the 'democratic deficit' in the EU.

With respect to the 'red card' proposal, however, Ireland would caution against a situation in which relatively small groups of national parliaments would be granted power to reverse or veto EU legislation, as has been suggested. Not only would such a move likely require a treaty change, which would in turn force a referendum in Ireland, but it would also reverse the process of integration over the past six decades, re-introduce full-scale intergovernmentalism, and undermine the EU legal order. Ireland cannot support the red card option in this format, and would urge that alternate options be considered.

It is noted that the Lisbon Treaty already provides for enhanced scrutiny of EU legislation by national parliaments through the 'yellow card' delaying tactic. Furthermore, the 'orange card' system provides for a proposal to be voted down by the co-legislators, should a simple majority of national parliaments raise an objection (and should the European Commission decide to maintain its proposal in the face of this majority). As noted in Council conclusions, however, these powers have rarely been exercised. This procedure could potentially be strengthened without a treaty change. Ireland would welcome a removal of impediments to the effective deployment of this procedure.

If these impediments were to be removed, perhaps through a strengthening of the role of COSAC in warning against unacceptable legislation and in coordinating responses from national parliaments, this would facilitate the deployment of the yellow/orange card procedures. Situations could therefore be foreseen in which a more significant majority of national parliaments might raise an objection to a proposal. Such a majority would inevitably influence the Commission's decision to withdraw a proposal, or failing this, for the co-legislators to vote it down. Thus, a de facto red card system would be in operation.

The initiatives described in the Council conclusions would, in our view, be sufficient to strengthen the role of national parliaments in the European legislative process. Nonetheless, Ireland would be willing to entertain further suggestions to improve the interactions between national parliaments and European institutions, provided they fall within the parameters of the Treaty.

With respect to 'ever closer union', it is necessary to begin with a clarification, as the phrase has conjured up numerous political and academic debates on the nature, purpose and

objective of European integration. For intergovernmentalists and Eurosceptics it denotes a federalist vision, but from the Irish perspective it is regarded more as a process of social and institutional change that does not in itself require the creating of a single federal state to achieve its objectives.

Furthermore, the phrase is clearly not used about *states*. It is at its core a normative principle describing a peace-building process, not an attempt to build a superstate. (This is hardly surprising, given that it was first coined just ten years after the Second World War.)

We understand the UK's concerns, but would recall the June 2014 Council conclusions in which the member states noted that the concept of 'ever closer union' already allows for different paths of integration for different countries, allowing those that want to deepen integration to move ahead, while respecting the wish of those that do not want to deepen any further to stay behind.

Although it has been made clear by the UK that this statement is insufficient in and of itself, Ireland feels that the wording might form an apt framework for a clarifying protocol in future, perhaps attached to a future accession treaty (Ireland's own experiences of seeking clarifying protocols to EU Treaties as a means of addressing domestic political issues would be an example of such a process).

Ireland is willing to support such an endeavour, and recognises that the concept variously described as 'variable geometry' and 'differential integration' has always existed to some extent in Europe. Though there is a justifiable wariness of formalising this concept in the EU Treaties, for Ireland the key issue is that the process of integration be permitted to continue as the member states see fit, and that no one state should be permitted to block this process.

If a protocol could be devised that would freeze the membership rights and obligations of the UK in the form currently incorporated in the Treaties, without prejudice to the other 27, this would be a satisfactory conclusion for Ireland.

### **Economic and monetary integration**

Ireland has a deep interest in defining new rules for relations between euro and non-euro members, primarily because these relations directly affect Northern Ireland and Irish relations with Britain. Disruptive fluctuations in the euro-sterling exchange rate have generated serious problems for Irish policy-makers. But they are even more serious for cross-border trade, where the relatively small, mainly indigenous firms are less able to insulate their activities. Any further disintegration of links between the eurozone and the UK would be highly undesirable from an Irish perspective.

It is felt that Mr Cameron's demands in this area – including recognising the multi-currency union, preventing competitive distortions between the 'ins' and 'outs' resulting from eurozone membership, and protecting the integrity of the single market – are not unreasonable, particularly in light of the UK's status as the largest of the 'out' countries, and the home of the financial capital of Europe.

Other demands, such as voluntary participation in eurozone initiatives, have in some cases previously been addressed. Ireland notes that during the creation of the Banking Union,

allowances were made for voluntary participation in the initiative, and the European Banking Authority's 'double majority' voting system created a working precedent to accommodate concerns of eurozone caucusing.

In all, it appears that many of these proposals can be addressed without immediate recourse to a treaty change, and we note that Mr Cameron has asked for 'recognition' of these matters. Ireland would suggest that this latter point could be a framework for an immediate solution to a number of the points listed, with a commitment to revisit others at a later date.

Nonetheless, it is inevitable that the deepening integration of the eurozone will eventually require an institutional rethink to durably manage relations between the 'ins' and 'outs'. Since it is clear that the UK will not join the euro, and that other member states are of a similar mind, it is therefore important that this relationship eventually be formalised on a permanent basis.

Though it will require much institutional ingenuity to devise a formula whereby being outside the euro is compatible with being inside the EU and the single market, it is felt that this should be addressed fully at a later date, and we urge the Council to commit to this process in the future.

## 8. Italy

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### General attitudes

Although there has been a rise in the level of Euroscepticism (35% of Italians believe that Italy would be better off outside the EU, 3% more than in 2013),<sup>45</sup> contrary to the UK's stance the Italian government is determined to further and deepen the EU integration process towards a 'United States of Europe'. In a document presented in May 2015 to the Council on 'Completing and strengthening the EMU', the Italian government called for greater integration of fiscal, structural, social and monetary policies.<sup>46</sup> In particular, Italy supports the development of fiscal integration and cross-country transfers financed by a common fiscal capacity. This would provide member countries with "the means to smooth demand in [the] presence of negative shocks, avoid a too-restrictive overall fiscal stance and minimise negative spillovers".<sup>47</sup>

Italy also endorses the development of a common financial policy through the Banking Union and the implementation of a common backstop and a single deposit guarantee scheme. Indeed, a common financial policy would facilitate the flow of credit to the real economy, maintain confidence in the markets by limiting fragmentation and make the monetary union stronger.

Moreover, the Italian government supports the development of a single foreign and security policy as well as defence policy with the aim of stabilising European borders and meeting current geopolitical challenges.<sup>48</sup> In this respect, current Prime Minister Matteo Renzi is an advocate of a Common European Asylum System and the development of coordinated strategies to face the immigration crisis.<sup>49</sup>

Given these premises, it is evident that the Italian government should be against the general possibility of individual opt-outs from the Union. Nevertheless, in order to avoid a Brexit and its potential political, economic and social effects, Italy could back some of the UK's requests. Politically, it would create a precedent that could be used by national Eurosceptic parties or movements to ask the government to negotiate a revised EU membership. To date, the Five Star Movement and Lega Nord have already been campaigning to secure a referendum on the euro.

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<sup>45</sup> See "Public Opinion in the European Union", Standard Eurobarometer 83, Fieldwork: Spring 2015, European Commission, Brussels, July 2015 ([http://ec.europa.eu/public\\_opinion/archives/eb/eb83/eb83\\_publ\\_fr.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_publ_fr.pdf)).

<sup>46</sup> See <http://blogs.ft.com/brusselsblog/files/2015/05/ITALIAN-CONTRIBUTION-EMU-REFORM-.pdf>

<sup>47</sup> Ibid.

<sup>48</sup> See [www.difesa.it/Primo\\_Piano/Pagine/20150604Pinotti\\_audizione\\_libro\\_bianco.aspx](http://www.difesa.it/Primo_Piano/Pagine/20150604Pinotti_audizione_libro_bianco.aspx)

<sup>49</sup> See [www.governo.it/backoffice/allegati/78558-10166.pdf](http://www.governo.it/backoffice/allegati/78558-10166.pdf)

Economically, a Brexit has the potential to affect trade relations with Italy. Since 2014, Italian exports to the UK have grown 9.4%, reaching a value of €9 billion. Socially, a British exit from the EU could negatively affect the conditions of Italians moving to the UK, as Britain might ask for a revision of the Schengen arrangements in a way that would limit intra-European migration. According to the Office for National Statistics, in 2014 there were 150,000 Italians living in the UK. In 2015, 57,600 Italians registered for UK national insurance numbers, which was 37% more than in 2014.

### **Economic and monetary integration**

Apart from the detrimental effects of a British opt-out from the Union, in line with the model of concentric circles, the Italian government might grant the UK some of its requests in order to avoid creating an obstacle to the European integration process itself. Indeed, a concentric model would allow the countries that push for greater political and economic integration to do so, without undermining those that are sceptical about further integration. Yet the latter should not be in a position to prevent greater unity at the core.

In this respect, Italy might well agree to the creation of new safeguards for non-eurozone members in the areas of European economic policy as long as these do not undermine the EMU and do not result in vetoes of eurozone policy choices. The Italian government has maintained that “the EMU is a key element of the European construction and its integrity and potential to deliver shared benefits should be further safeguarded”.<sup>50</sup>

### **Competitiveness**

Moreover, in line with the UK’s demand to make Europe more competitive and less bureaucratic and to promote more transparent and democratic EU governance, Italy supports a Capital Markets Union. This has the potential to boost the efficient cross-border allocation of capital throughout all member states and to diversify sources of financing, especially for small and medium enterprises (SMEs), to the great advantage of the single market. Still, Italy believes that further integration in other economic sectors, such as services, and the development of European initiatives for SMEs and the Digital Single Market would be key to fostering long-term economic productivity and general welfare.<sup>51</sup>

Italy also favours the European Commission’s Better Regulation Package. The quality of regulation is crucial to boosting competitiveness and economic development, as well as an essential condition to facilitate the exercise of the fundamental rights of citizenship.<sup>52</sup>

Unlike the UK, however, Italy calls for a stronger European role in providing detailed directives or in increasing the use of regulations (or both).<sup>53</sup> Indeed, when transposing EU

<sup>50</sup> See <http://blogs.ft.com/brusselsblog/files/2015/05/ITALIAN-CONTRIBUTION-EMU-REFORM-.pdf>

<sup>51</sup> See ISTAT, Rapporto Annuale 2015, La situazione del Paese, Rome, p. 114 ([www.istat.it/it/files/2015/05/Rapporto-Annuale-2015.pdf](http://www.istat.it/it/files/2015/05/Rapporto-Annuale-2015.pdf)).

<sup>52</sup> See [http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/pdf/59/indag/c59\\_semplificazione/2014/03/03/leg.17.stencomm.data20140303.P1.com59.indag.c59\\_semplificazione.0024.pdf](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/pdf/59/indag/c59_semplificazione/2014/03/03/leg.17.stencomm.data20140303.P1.com59.indag.c59_semplificazione.0024.pdf)

<sup>53</sup> Ibid.

directives into national legislation, countries might introduce specifications or additional rules (the so-called 'gold-plating' phenomenon) that may go well beyond EU requirements and potentially undermine the impact of European policies among member states.

### Sovereignty

The Italian government is not in favour of removing the 'ever closer union' clause in the Treaty or any other clause referring to European fundamental principles that could jeopardise further integration. In the same vein, Italy does not support the introduction of caps or limitations on intra-EU migration in a way that would undermine the "freedom of movement for workers" (Art. 45 of the Treaty on the Functioning of the European Union), or opt-outs from the EU's employment *acquis*. According to Prime Minister Renzi, the EU will become "a real union" only when employment policies are uniform across member countries. Apart from affecting the integration process, such reforms would also limit workers' freedom to move. In this line, the May 2015 governmental document on "Completing and Strengthening the EMU" argues that far-reaching common initiatives are needed to reduce unemployment rates and facilitate adjustments that are taking place in European labour markets.<sup>54</sup> For instance, Italy supports the creation of common unemployment insurance as a form of risk-sharing among member states to counter the perverse effects of fluctuations in the economic cycle.

Similarly, the Italian government will not support the introduction of procedures that might undermine the European decision-making process or the effectiveness of EU institutions. For instance, although Italy calls for a more active role for national parliaments in the European decision-making process, it does not endorse the UK's proposal for introducing a 'red card' mechanism whereby national parliaments could block the Commission's proposals. Nor is it in favour of introducing a 'green card' mechanism to allow national parliaments to make proactive contributions to EU legislation. Such a mechanism would alter the balance between the European Parliament and national parliaments, fragment the European decision-making process by forcing the Commission to evaluate initiatives advanced by a national parliament or group of parliaments, and encourage intergovernmental agreements to promote national interests instead of common ones.

To sum up, although there are not many political areas in which Italy is aligned with Britain, and even when it comes to fostering competitiveness and better regulation Italy believes that the EU should play a central role, EU member countries should grant Britain some of its requests. As stated time and again by Prime Minister Renzi, there cannot be an EU without the UK. Hence, the Union should move towards a model of concentric circles, which would allow the countries wishing to achieve greater political and economic integration to do so, without being blocked by more sceptical member states.

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<sup>54</sup> See <http://blogs.ft.com/brusselsblog/files/2015/05/ITALIAN-CONTRIBUTION-EMU-REFORM-.pdf>

## 9. Poland

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### Competitiveness

The EU single market, which is the cornerstone of the EU, needs revitalisation and more integrity. To boost the EU's competitiveness, improve the business environment and spur innovation, the EU needs more integration in the area of services. This is why Poland welcomes all actions facilitating free movement of services, which benefit both service providers and receivers and generate more high-quality jobs.

In particular, Poland strongly backs an ambitious approach to the completion of the Digital Single Market, a key driver of innovation. It views this area as important for strengthening the EU's global position, which has been undermined by the recent economic crisis. Yet, when designing digital market initiatives, the EU must take into consideration that their benefits should be spread as equally as possible to generate inclusive growth in all regions of the EU.

Poland is also willing to support further integration in the area of finance, namely the creation of the Capital Markets Union, which would facilitate cross-border investment. It is, however, important that the proposed initiatives take into account the specific conditions of local markets and do not lead to excessive burdens on those participants operating locally. In this respect, it is necessary to find the right balance between the security of the financial system and the interests of individual member states (including the financial stability of local markets).

A competitive EU single market cannot operate without a robust and integrated energy market. That is why Poland sees the completion of the Energy Union and implementation of the Third Energy Package as priority projects. Poland also stresses that EU initiatives in the areas of energy and climate policy should be carried out in close connection with improving industrial competitiveness and protecting jobs. In this regard, Poland holds the view that each member state should be able to determine its own energy mix within reasonable EU emission targets.

Poland welcomes the European Commission's Better Regulation Package as an effort to reduce unnecessary regulatory burdens for businesses. It especially favours the improved methodology of conducting EU impact assessments for new policy proposals, including the competitiveness tests for small and medium-sized enterprises. Yet in order to ensure that new legislative proposals do not incur asymmetric costs, not only for states and economic sectors but also for different regions and regional development, Poland also recommends that a territorial impact assessment be carried out as an integral part of the Commission's impact assessment procedure.

## Free movement of labour

The EU single market is based on four interdependent and mutually reinforcing freedoms that work well only when treated as a whole package. The free movement of persons is an integral and inextricable element. For this reason, Poland strongly objects to the possibility of introducing any limitations on intra-EU migration other than those mentioned in the Treaties. Apart from the fact that such limitations would require an undesired and unpredictable process of treaty changes, they could also call into question the principle of equal treatment in the EU without barriers, free from stereotypes and intolerance. Some of the concerns linked with abuse of the welfare provision systems by immigrants are exaggerated or rooted in areas other than the freedom of movement. The right to take up employment abroad should be distinguished from the issue of receiving welfare benefits, a discussion that lies in the competences of national authorities and could be tackled separately. Additionally, Poland reiterates that the jurisprudence of the Court of Justice of the European Union declares that EU member states have the possibility to deny social benefits to economically inactive EU citizens who moved to another country for the purpose of claiming welfare.

In a similar vein, Poland does not agree that individual member states should be able to opt out of parts of the EU employment *acquis*, such as the directives on working time and temporary agency work. Such opt-outs would constitute a dangerous precedent with consequences for the entire European integration project, triggering pleas for special treatment in various policy sectors by other member states. The current status quo in the employment *acquis* allows for a good balance between the EU and member state competences with individual opt-outs in specific cases. Poland certainly agrees with the UK that EU regulations must be planned with respect to different particularities, tailored to the needs of the member states and addressed with a better regulation agenda, but these conditions should not translate into an acceptance of new opt-outs.

## Sovereignty

The integrity and ambitious policy-making capacity of the EU lies in its unique institutional structure and decision-making, which is based on a mixture of intergovernmental and Community methods accompanied by a strongly guarded principle of subsidiarity. Poland is of the opinion that the EU should continue to be a *sui generis* hybrid structure geared towards advancing the interests of its member states. While in areas such as the single market or some aspects of foreign and security policy further pooling of sovereignty is desirable and will benefit the member states and the EU, some strategic competences should always remain at the national level.

As reiterated in the June 2014 European Council conclusions, the concept of 'ever closer union' allows the different member states to take various approaches to integration and provides for the wishes of some member states, such as the UK, to opt-out of common EU policies. Although the phrase is to a large extent symbolic, Poland understands the wish of the UK to opt out from the concept of ever closer union, understood as an obligation to adhere to and implement policies that might be detrimental to its national interest and



disregard domestic specificities. For this reason, Poland welcomes further clarification of the application of ever closer union in general and is open to further discussing the British position in this regard.

At the same time, with the aim of increasing the democratic legitimacy of the EU, Poland supports the request to strengthen national parliaments in EU policy-making. One of the ways to achieve this is to encourage improvements to the 'yellow' and 'orange card' procedures - especially in the way EU institutions address the concerns of national parliaments. Poland is also open to discussing potential ways of granting national parliaments a possibility to effectively block EU legislation (with a 'red card') - if there is a significant support base for it among the parliamentary chambers. Finally, Poland supports establishing a 'green card' mechanism based on the existing political dialogue between the European Commission and national parliaments, as long as its creation would be compatible with the current Treaty framework and constitutional regulations in the member states.

### **Economic and monetary integration**

Although Poland is obliged to become a member of the eurozone, the time frame for potential eurozone membership has still not been determined. The recent financial and economic crises have revealed many weaknesses and imperfections of the eurozone - thereby discouraging potential members from joining the club. That is why the eurozone requires further reforms to become attractive enough for countries like Poland that have managed to secure stable economic growth over the last few years to join the club. Poland positively assesses the ambitious approach to reforming the Economic and Monetary Union (EMU) presented in the Five Presidents' Report. More importantly, it welcomes the report's commitment to an open and transparent process of EMU reform, taking into account the interests of all EU member states.

Along with the UK, Poland would like the EMU decision-making mechanisms in the field of European economic policy to be sufficiently inclusive and respect the legitimate interests of non-euro member states. Poland is therefore open to considering potential forms of ensuring that such principles are observed, but thinks that prompt improvement of the EMU architecture by simplifying and fine-tuning its existing governance framework should be the top priority for all EU member states.

## 10. Slovakia

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### General attitudes

The United Kingdom has been an important partner in Slovakia's dealings with the EU. London strongly supported the EU accession of post-communist states and ranked consistently among the top three foreign investors in Slovakia. Its decision to open the country's labour market to new member states in May 2004 underlined this image of friendliness. Britain also played an important role in the launch of the European Neighbourhood Policy, which helped structure new political relations between Slovakia and its biggest neighbour, Ukraine.

Despite recent intra-EU clashes over the refugee crisis, Slovakia's consistent goal has been to consolidate its place in the Union's political core and to help preserve the EU's broader political cohesion against the backdrop of its growing problems. A Brexit could therefore challenge Slovakia's preferred direction for the EU as much as it could undermine the strength of the EU's liberal economic voice.

### Sovereignty

As for the UK's proposal to remove or opt out of the phrase 'ever closer union', which is in the preamble of the Treaty on European Union (TEU), under certain circumstances Slovakia is willing to support the UK, yet it is important to note that such a change would require reopening the EU Treaties, which Slovakia is against. For a start, removing such a phrase from the preamble must be considered very carefully, as it might be seen as a first backward step in the process of European integration. It must therefore be stated clearly that such a change will not harm the integration ambitions of other EU member states. In addition, it is important to note that the preamble of the TEU speaks of an 'ever closer union among the peoples of Europe', so argumentation that it leads to further institutional integration is disputable. Slovakia supports the idea of a multi-track Europe that allows those countries that want to deepen integration to move ahead while respecting the wish of others (such as the UK) that do not, providing this does not lead to permanent dividing lines within the EU.

Slovakia has consistently argued against opening up the EU Treaties, which could further weaken the EU's cohesion. At the same time, Slovakia welcomes additional strengthening of the role of national parliaments in EU policy-making in order to support the principles of subsidiarity and proportionality. In evaluating the available mechanisms of 'yellow' and 'orange cards', we need to admit that due to a lack of resources and human capital in the country's legislative body, it is quite improbable that the suggested procedures for a 'green' or 'red card' would significantly strengthen the role of the national parliament or the transparency and legitimacy of EU decisions in Slovakia. Hence, Slovakia welcomes the idea of encouraging the European Commission to investigate how to strengthen and make more

efficient the mechanisms that are already recognised in the recent institutional framework of the EU Treaties, instead of introducing new procedures through a treaty change.

### **Competitiveness**

Recalling the principles and conclusions adopted during previous European Council meetings, Slovakia supports agreement on the Transatlantic Trade and Investment Partnership with the US, a trade and investment agreement with Japan and exploring further possibilities for cooperation with other countries, e.g. China. Slovakia is a strong proponent of completing the single market, especially in the areas of services, the digital agenda, capital markets and energy.

In the upcoming trio presidency, Slovakia, together with Malta and the Netherlands, wishes to take forward initiatives aimed at reducing the cost of non-Europe while strengthening EU standards. Furthermore, it welcomes the European Commission's Better Regulation Package of May 2015, which aims to remove unnecessary burdens and costs for businesses. Nevertheless, it is important to stress that it should be fully implemented at both the member state and EU level.

### **Economic and monetary integration**

Slovakia is fully aware of the concerns expressed by the UK and other non-eurozone members and understands that there is a need for future reform within the eurozone. It is crucial to prevent the creation of permanent dividing lines among eurozone members and countries aspiring to use the common European currency. While not currently on the agenda, future enlargement of the eurozone to Visegrad neighbours is especially in Slovakia's strategic and economic interest.

As for concrete measures, new rules on how to protect non-eurozone members should be introduced; however, while all possibilities need to be carefully explored and analysed, non-member states should not be able to veto internal decisions of the eurozone.

### **Free movement of labour**

We need to differentiate carefully between internal and external EU migration and address these issues separately. In any case, the problem of external migration and the refugee crisis cannot be addressed by imposing any restrictions on internal EU migration, which would be strongly against the principles of non-discrimination on the grounds of nationality, free movement of labour and equal treatment in the EU. Slovakia does not want to undermine free movement of labour across the Union. With a six-digit number of Slovak workers in the UK, any future deal on labour migration must ensure that a family from Slovakia living and working in London is entitled to the same benefits and rights as a similar Dutch or Scottish family. Slovakia is strongly against introducing any new limitations on internal EU migration – a strict red line for the country in the upcoming negotiations.

## 11. Spain

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### **Economic and monetary integration**

If the economic crisis (and the refugee crisis) has shown anything it is that the problem of the EU has been one of insufficient integration. Spain shows a clear commitment to further integration in the EU, in both economic and political terms.

Spain could agree with the creation of safeguards for non-euro member states as long as two factors are considered: i) that these would not interfere with the ongoing process of more integration within the eurozone; and ii) that they would not adversely affect agility in the decision-making process. A clear requirement for Spain in this area of negotiation would be recognition that the euro is the currency of the EU.

### **Competitiveness**

Strengthening the single market is a key concern for Spain, as the main goal of the EU at this stage is to regain citizens' trust, which can only be achieved by creating jobs and promoting growth. Spain broadly shares the view that the single market is one of the most important achievements of the EU, and in that spirit any measure that seeks to deepen it is generally well received.

Spain supports the strengthening of the single market in all its areas, including services, finance and trade (particularly the negotiations on the Transatlantic Trade and Investment Partnership, but also other partnerships). The current government is especially ready to work with the UK in this respect, as reflected in a recent joint op-ed by the two prime ministers, Mariano Rajoy and David Cameron, in a Spanish economic newspaper.<sup>55</sup> Lowering costs for enterprises and focusing on boosting competitiveness in both countries and in the EU as a whole is a shared objective.

The Energy Union is also of crucial interest, with a clear focus on the interconnections between Spain (and Portugal) and the rest of Europe. The Digital Single Market is another cornerstone for Spain.

In addition, Spain welcomes the European Commission's Better Regulation Package of May 2015. It is a good basis from which to continue work on removing unnecessary burdens and costs for businesses.

### **Sovereignty**

For Spain, the EU project is a vital one. It is even part of its national project, and has been so for the last three decades. Spain's European vision was even present during Franco's regime and has been reinforced with the democratic transition of the country.

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<sup>55</sup> Mariano Rajoy and David Cameron, "Por una Europa más competitiva", *Expansión*, 4 September 2015. See [www.expansion.com/opinion/2015/09/04/55e8ad05268e3e75308b459f.html](http://www.expansion.com/opinion/2015/09/04/55e8ad05268e3e75308b459f.html)

There is no conceivable way in which Spain would change its pro-integrationist stance towards the EU. All the major parties in the country share this approach, which is also accepted by a majority of its citizens (although some criticism of the European project has arisen as a result of an excessive focus on austerity measures in the last few years).

Spain supports a clear deepening of the process of economic and political integration. This process must benefit European citizens and make their lives better in three ways: economically, socially and as regards territorial cohesion. The aforementioned process must also guarantee the irreversibility of the euro, focus on the competitiveness of the internal market and the economy as a whole, and it must reinforce Europe as a global actor in order to secure its influence and role in the world.

Spain is in favour of an ever closer union among the peoples of Europe and would not support the removal of this phrase from the preamble of the Treaty on European Union. In any case that would require unanimity, which carries a huge political risk.

Nevertheless, and considering that other EU member states do not share this approach, Spain would be able to accept a flexible, multi-speed Europe, with different paths of integration for different countries, which in practice already exists. Specifically, in the case of the UK, it currently has four opt-outs in relation to Economic and Monetary Union, the Schengen Agreement, justice and home affairs, and human rights.

Spain would therefore not oppose the UK's will to opt out from ever closer union. This could ultimately be resolved through the addition of a protocol in the next round of treaty changes. Visions and national interests can be different among member states and Spain supports negotiation and dialogue.

Spain is also firmly committed to respect of the principles of subsidiarity and proportionality, which the EU has the discretion to apply regarding its competencies.

Spain welcomed the creation of the 'early warning mechanism' in the Lisbon Treaty and is open to discussing ways to improve the functioning of it, including revision of the 'yellow card' procedure. That being said, Spain's approach is very pro-integration, so any obstacle to 'more Europe' is generally not welcome. A 'red card' system could result in European Commission legislation being blocked, so it is not seen as a positive step. Spain opposes giving national parliaments veto rights over EU legislation.

By contrast, a 'green card' system is viewed favourably, as it may involve national parliaments in a more constructive way. Nevertheless, if adopted, it cannot alter the Commission's exclusive right to initiate legislation.

### **Free movement of labour**

Spain considers that the free movement of people is one of the most important achievements in the history of European integration. It is thus contrary to Spain's interests and vision to impose caps on intra-EU migration and is clearly a red line for the country. Rather than capping, which Spain does not favour, there should be dialogue on how to prevent intra-EU migrants from abusing the system.

## 12. The Netherlands

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### General attitudes

'Europe must change – otherwise we'll leave' threatens the British government. Such threats have been made for quite some time now, with only problematic solutions in sight. The Netherlands has been sympathetic to British demands for reform for a long time, mainly because it fears an EU in which southern countries with stronger regulatory traditions gain influence. The Dutch have been strong supporters of British membership ever since the start of the European integration project. In The Hague, however, it is clear at this stage that regardless of the outcome, the British referendum can only have losers. Certain points on the UK's wishlist are inconsequential. The rest vary from being unclear to damaging for the eurozone and are not supported by the Netherlands. The heated debates over changes that have been initiated by Prime Minister David Cameron mainly reflect national political sentiment in the UK and find little support in the Netherlands. The impression is mounting that the UK's support for membership is so unstable that it may as well leave the Union. In any case, the idea is gaining ground that 'the ball is in their court' and that making concessions that may harm the eurozone could be more dangerous than Brexit.

Nevertheless, the Dutch would favour the UK's continued membership of the EU. At the same time, however, there are growing concerns about the content of Britain's demands. The negotiating style of Cameron and his ministers is cause for concern and raises questions about the sustainability of British membership. It is hoped that the British government and voters will use the coming months leading up to the referendum to reflect on the viability of their arguments and on their self-perception.

### Economic and monetary integration

First and foremost, Cameron wants no distinction to be made between euro countries and countries that keep their own currency. The British believe that the EU is all about the internal market and do not want the eurozone to become some sort of 'first-class EU'. The UK government does not accept that a healthy euro is the euro countries' highest priority. For the Netherlands, any policy to be agreed upon will have to be judged by the euro countries in terms of its consequences for the euro. For instance, the British regard bank regulation as an internal market issue. Yet in the eyes of the eurozone countries, banks pose a systemic risk that needs to be contained. Similarly, for the UK, European labour migration is a threat to its welfare state, whereas migration is essential for the sustainability of the eurozone.

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<sup>56</sup> This elaborated version is based on an article by the author in the *NRC*, "If the British want to leave the EU, let them", 8 December 2015.

This distinction between euro-ins and euro-outs is likely to increase. France and Germany (as well as the Netherlands and other countries) will probably concentrate their efforts on making the euro a viable and successful project. Discussions about necessary treaty changes are envisaged for some time after 2017 and, as can be seen from the first and the second presidency reports (of 2012 and 2015), ideas for strengthening the eurozone are being elaborated and will remain high on the political agenda. This will also include debates on the size and functions of the EU budget. Northern countries may accept the French proposal for a separate EU budget as long as it is linked to national economic reforms. Moreover, discussions on a separate, eurozone type of European Parliament (e.g. based on a combination of national MPs and MEPs from eurozone countries) or a specific European parliamentary committee will probably figure prominently in the upcoming reform debates. Economic control over member states is likely to increase. Economic contracts may still be a possibility. Hence, Cameron's first wish, to avoid a gap between the eurozone and the rest of the EU, seems outdated: the euro is of overriding importance.

One implication of the current Brexit discussions concerns the role of the UK in the treaty change negotiations that will start sometime after 2017. Treaty change is to be expected with a view to elaborating economic policy coordination within the eurozone. If the UK decides to stay in the EU, it will be unacceptable if this decision is immediately followed by obstructive behaviour during the negotiations on deeper economic integration. The UK will probably be in an uncomfortable position if it has to move straight from its EU referendum to treaty change negotiations. Future Dutch governments will most probably continue looking for ways to reinforce the EU and the eurozone, and it will not help if the UK decides to stay in but is uncooperative when it comes to taking steps towards a stronger eurozone. In the run-up to the British referendum, it should be made clear that continued membership would involve a cooperative attitude in the upcoming negotiations on institutional reforms.

As current discussions in the UK suggest, the British government has lost the necessary touch for eurozone negotiations. For example, ministers George Osborne (finance) and David Lidington (EU affairs) have emphasised the 'remorseless logic' of centralisation of the eurozone. The British government seems to emphasise subsidiarity for itself but holds that the eurozone should centralise. First of all, this notion of centralisation of the eurozone seems difficult to reconcile with the British demand to remain – as a non-euro country – an equal player in the EU. Second, there are different ways of reinforcing the eurozone. The UK is stressing centralisation as remorseless logic while eurozone countries themselves are looking for alternative ways to strengthen economic coordination. It is hard to see at this stage whether or how the UK can play a constructive role in the upcoming negotiations on reforms of the Treaty. The UK threatens to be a hindrance rather than a friend to the Netherlands by either blocking economic policy reforms or pressing for centralisation.

### **Competitiveness**

The second concession that the British want to enforce is the recognition that competitiveness should be the most important EU principle. This demand fails to recognise that EU policy is always assessed against several criteria, including its effects on global competitiveness. Large-scale deregulation operations have already been high on the agenda for quite some

time. EU policy is recognised to be of high quality and the British have not been able to prove otherwise. Moreover, the EU also seeks to take other objectives into account, such as sustainability. A British competitiveness diktat is unworkable because European countries may have other, possibly more mature, considerations, for instance as regards bank regulation.

The insistence on 'competitiveness' is also telling of the British self-image. It suggests that the UK is more oriented towards competition than the rest of the EU. However, the British demand to curtail labour migration is nothing less than an attack on one of the four freedoms. It is hard to understand how the UK can both insist on competitiveness as a leading principle and demand a curb on labour mobility. Its self-image as a competitive country contradicts its desire to protect its welfare state. Apparently, competition is key but not when it comes to labour market conditions. Besides this major inconsistency, the UK is sending the message that it distrusts the quality and competitiveness of EU policies. Yet, despite 32 studies on the balance of competencies, the UK has failed to pragmatically substantiate its criticism of EU legislation. The British criticism of the EU's competitiveness borders on fact-free politics.

### **Sovereignty**

The third set of British demands is about European symbols. This quickly becomes quite technical as well as pointless. Cameron wants the reference to an 'ever closer union' taken out of the Treaty. Already in June 2014, these three words were stripped of their significance by the European Council's statement that they have no special meaning. Nevertheless, the British want them symbolically removed. They also want national parliaments to be able to issue a 'red card' to the European Commission in order to stop policy initiatives. This red card should give national parliaments a sense of control. Cameron believes in the 'sovereignty' of the British parliament and wants the British citizen to regain trust in the EU through the red card. 'Yellow' and 'orange cards' already exist, but I have never met a citizen who got a pro-EU feeling from them. More important than a symbol of national self-esteem is that red cards may be damaging for the eurozone. If the card could work, then France and Italy, to name two, would only be too happy to use it to stop the legislation needed to liberalise the eurozone. A red card may have negative consequences for the internal market, where reforms are needed, but the damage to the eurozone might be a lot worse.

Moreover, these claims imply treaty reforms, and thus referenda and vetoes in, among others, the Netherlands. Unilateral demands for a red card are therefore not welcomed in the Netherlands. In general, the Dutch favour a stronger role for national parliaments, but at this point it is unlikely that a veto with a low threshold in terms of the number of parliaments is regarded as a wise development of the yellow and orange cards as they exist currently.

### **Free movement of labour**

The last field of reform concerns the treatment of migrant workers. Demands in that respect may restrict the free movement of workers, and thus in the Netherlands are considered incompatible with internal market policy and are potentially damaging to the eurozone. Free movement of persons is necessary to make sure that unemployed people from one country



can work in another country. If free movement is restricted, the eurozone will need a social safety net – which is unfeasible and unwelcome. Cameron does not seem to care about the eurozone’s need for labour mobility, given that he distances himself completely from the euro. The British wish to limit labour mobility stems from overdue reforms to their own welfare state and from opposition by the UK Independence Party to East European workers. Cameron needs to resolve this at home, not at EU level. The Dutch government is keen to address abuse of the free movement of labour<sup>57</sup> and to find reassuring formulations to address British concerns, but it is not willing to undermine the core principles of European integration.

### **The British negotiating style needs reforming**

The shortlist of desired reforms hardly justifies the stampede of Cameron’s Brexit debate. The UK finds implicit or explicit fault with the EU and EU member states. It is typical of British arrogance that they think they are sovereign, that other member states would not want meaningful competition, and that they see themselves – but not other member states – as global players. The discussions say a lot about the UK and little about the EU. The atmosphere in The Hague seems to be that British membership is preferred but if Cameron contemplates an exit, so be it. There are limits to the ‘goodwill factor’.

The situation may have come to the point that it may not matter much whether the UK has one foot in the EU or one foot out. As a member, the UK is likely to continue contemplating exit and to be unhappy about the ‘Eurocracy’. In that case, for the foreseeable future, it will keep one foot out of the EU. As a non-member, however, the UK will probably remain highly engaged with the EU’s geopolitics (notably concerning relations with Russia and monitoring refugee flows across the Mediterranean) and with internal market policies. Hence, after Brexit, it will try to keep one foot in.

Whether with one foot in or one foot out, what will remain particularly worrying is the British tone with which it is managing its relations with the EU and with its European ‘friends’. Cameron decided to give his in/out speech (which became known as the ‘Bloomberg speech’) in Amsterdam. The Dutch government of Prime Minister Mark Rutte had just changed from Rutte 1 (supported by the Freedom Party of Geert Wilders and hence critical of the EU) to Rutte 2. The new government was thus looking for a more positive European tone and was certainly not interested in sharing a podium or a photo opportunity with Cameron if it was related to the referendum. Apparently, the British government did not even have the courtesy to check at a diplomatic level whether the Dutch government was interested in playing a part in (or even hosting) the in/out speech in Amsterdam. In addition to this diplomatic mishap, Cameron raised the issue of the referendum by demanding to renegotiate the ‘balance of competencies’. However, the balance of competencies was not at stake. The renegotiations concerned the legislation falling under these competencies (the *acquis*). Thus, the start of the discussions was unfortunate, both in terms of diplomatic skill and legal correctness. Other British ‘renegotiations’ have not displayed much diplomatic or

<sup>57</sup> See A. Schout, J.M. Wiersma and M. Gomes Neto, “The European Asscher agenda, a political and economic minefield”, Policy Brief, Clingendael Institute, The Hague, 2015.

legal expertise either, as discussed above. There is wider concern about EU policies among member states (including in the Netherlands), but the British approach so far has not resulted in lasting coalitions for reform. Change and the corresponding negotiations take time. The EU has come a long way by elaborating arguments together with other EU member states, finding wider support and negotiating compromises. The British style of ‘if we do not get our way now, we will leave’ does not work in the EU – it does not work now and it will not work in the future. This UK government shows above all that it does not understand how the EU works.

### **Real European competition**

The possible Brexit is often discussed in terms of threats – threats to the integrity of the internal market and to the EU’s geopolitical powers. Yet Brexit could also offer an advantage. In 1996, Albert Breton concluded that the EU was more harmonised than the federations of the US or Canada.<sup>58</sup> The UK’s departure from the EU would create a new form of competition for the eurozone and the internal market. Foreign direct investments could go back to the UK, UK production might flourish and UK labour markets might outperform EU labour markets. Such developments would provide the EU with a new role model and stimulate reforms. Conversely, if instead the EU outperforms the UK, it will be a reassuring sign to European citizens that the EU is not doing so badly after all. Brexit might bring back policy competition and therefore be a contribution to EU competitiveness.

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<sup>58</sup> See A. Breton, *Competitive governments: An economic theory of politics and public finance*, Cambridge, MA: Cambridge University Press, 1996.

### 13. United Kingdom

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#### General attitudes

In 2013, David Cameron promised the British people that if he remained prime minister after the general election he would reform the UK's relationship with Europe and put the case to an in/out referendum. After the Conservative Party's electoral victory in May 2015, Cameron embarked on a charm offensive across EU capitals to obtain support for his reform plans. Cameron thought that the less specific he was on what he wanted, the better. He feared that by revealing his exact plans he would expose himself to heavy criticism by his party's Eurosceptics and to their demands for 'the impossible'.

This lack of clarity served David Cameron's ends, who wanted to keep his Eurosceptics guessing. But for European leaders, his blind-man's bluff was a distraction from Europe's other challenges, namely the refugee crisis. Member states therefore pressed Cameron to reveal his plans in greater detail so that they could start working on their own negotiating positions. The British prime minister bowed to this pressure and elaborated on the major themes of his reform plans in a letter to Donald Tusk, the European Council President, dated 10 November 2015.<sup>60</sup> Those who might have expected detailed legal proposals in the letter were surely disappointed. Yet the letter at least ended the UK government's long phoney war with Brussels and helped to organise discussions about the reform package between Britain and the other 27 member states. Cameron hoped that he could reach a deal when EU leaders gathered in Brussels in February 2016 and then hold a referendum this year. This paper tries to explain the British government's priorities in the negotiations and the challenges it has faced.

#### Competitiveness

The UK government wishes to boost Europe's competitiveness and estimates that services generate 90% of new jobs but account for only 20% of intra-EU trade. Thus, British officials estimate that full implementation of the EU's existing Services Directive could add around 1.8% to the EU's GDP.<sup>61</sup> The British Business Taskforce on cutting red tape made the point that scrapping the requirement to write down health and safety risk assessments could save business across Europe €2.7 billion.<sup>62</sup> The British government thinks that if the EU does not deepen its single market, particularly in services, and reduce the regulatory burden on

<sup>59</sup> This piece builds on CER research and in particular on the CER policy brief by the author, "Cameron's EU reforms: Will Europe buy them?", CER Policy Brief, CER, London, December 2015.

<sup>60</sup> See the letter by David Cameron to European Council President Donald Tusk, "A new settlement for the United Kingdom in a reformed European Union", 10 November 2015.

<sup>61</sup> See the UK Department for Business, Innovation & Skills, "UK non-paper: Deepening single market in goods and services", London, July 2015.

<sup>62</sup> See Business Taskforce, "Cut EU red tape: Report from the Business Taskforce", Policy Paper 14 February 2014 ([www.gov.uk](http://www.gov.uk)).

European business it will lose a 'global race' against other emerging powers. It also wants to make life easier for consumers who prefer to shop online rather than queue in supermarkets. Today, firms try to oblige customers to buy products from a website based in their own country but Cameron thinks that this is unjustified price discrimination and aims to fight it. Finally, the British prime minister would like to see more ambitious trade deals with world partners.

In fact, the European Commission has already taken up the gauntlet in many of the above areas. Commissioner Günther Oettinger proposed a strategy for the Digital Single Market on 6 May 2015 and Commission First Vice President Frans Timmermans published a Better Regulation Package on 19 May. The Commission also announced a new trade and investment strategy in October 2015. But for tactical reasons, the Commission will allow Cameron to claim some credit for the ongoing dynamics in the area of competitiveness.

### Sovereignty

The British government wants to strengthen the role of national parliaments in EU decision-making. Today, national parliaments can cooperate to show the European Commission a 'yellow' or an 'orange card' when they think that EU-wide legislation is not necessary and that lower levels of government can better deal with the subject matter (the subsidiarity principle).<sup>63</sup> But the European Commission can still press on with the proposal. This has been subject to heavy criticism among Conservative backbenchers, who have argued that MPs are more attuned to citizens' concerns than the technocrats in Brussels and that Cameron should demand changes. National parliaments, in their view, should be able to show the Commission a red card and veto its proposals. The House of Lords EU Select Committee urged the British government in July 2015 to pick up on the ongoing debate in the rest of Europe on a 'green card' initiative, whereby national parliaments can suggest that the Commission proposes, modifies or withdraws laws. British peers thought that EU leaders would be keener on the idea that promotes a constructive role for parliaments in the EU.<sup>64</sup> The renegotiation simulations that were organised by CEPS on 7-8 October in Brussels suggested that the British peers were right. EU experts standing in for EU leaders in the simulations had more sympathy for the idea of green cards than red ones.<sup>65</sup>

But Cameron focused in his letter to Donald Tusk exclusively on an arrangement that would allow a group of parliaments to stop unwanted EU legislation. Budapest and Warsaw like the idea of red cards, but a majority of member states think that parliaments should focus on

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<sup>63</sup> National parliaments have two votes (one vote per chamber in bicameral parliaments) that they can cast against European Commission proposals if they think that the subsidiarity principle has been breached. A third of votes (and a fourth in the area of justice and home affairs) constitutes a yellow card and more than half of votes an orange card. If parliaments show an orange card to a Commission proposal, 55% of the members of the Council of the EU or the European Parliament by a simple majority can decide not to consider the Commission's proposal any further.

<sup>64</sup> See the House of Lords European Union Committee, *The referendum on UK membership of the EU: Assessing the reform process*, 3rd Report of Session 2015–16, London: Stationary Office Ltd., 28 July 2015.

<sup>65</sup> See S. Blockmans and S. Weiss, "Will Cameron get what he wants? Anticipating reactions to Britain's EU reform proposals", CEPS Commentary, CEPS, Brussels, 29 October 2015.

scrutinising their governments' European policies. They fear that empowering parliaments with a red card would create chaos rather than make the EU decision-making process more efficient. Moreover, putting red cards on a legal footing requires a treaty change, which the vast majority of member states do not want.<sup>66</sup> Still, Cameron will probably try to convince the European Commission to voluntarily withdraw its proposals whenever parliaments show it a yellow card. If that does not work, he may want to persuade member states to block Commission proposals whenever parliaments show an orange card. Both arrangements would stand some chance of being accepted by the current opponents of red cards if the threshold were higher than the current one envisaged for parliaments putting forward reservations about Commission proposals. This is because critics would find it difficult to claim that Cameron was pushing for changes that circumvent EU Treaties or that red cards would paralyse decision-making. Until now, parliaments have reached the threshold for yellow cards only twice and have failed to show any orange card. It is difficult to imagine that a new procedure would result in large numbers of red cards.

Moreover, the British government wants the EU to recognise that the 'ever closer union' does not apply to the UK. In June 2014, the European Council reassured prime minister Cameron in its conclusions that ever closer union allows for different paths of integration and therefore Britain will not be forced to integrate more deeply if it does not want to. But this is not satisfactory to Conservative Eurosceptics, who have complained that the Court of Justice of the European Union (CJEU) has used this concept to back judgments that pave the way for more European integration, with which Britain does not feel comfortable.

There is no doubt that British demands have ruffled feathers and raised eyebrows elsewhere in the EU: the Treaty on European Union (TEU) indicates that the EU should seek to work towards ever closer union "among the peoples...in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity".<sup>67</sup> They think that the British government's concerns that the EU and its institutions will pursue an integrationist agenda on the basis of this concept are overblown. The analysis of the House of Commons Library also indicates that the CJEU does not refer to this concept too often.<sup>68</sup> But precisely because the majority of member states see little relevance in this concept for the EU's further integration they may be willing to accommodate Cameron's concerns if it helps him to argue for the 'remain' stance in the referendum.

### **Economic and monetary integration**

The British prime minister wants the EU to accept that European integration is a 'multi-currency' project in which the rights of both 'euro-ins' and '-outs' are equally protected. The British fear that the eurozone, which now has a voting majority in the Council of the EU

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<sup>66</sup> Poland may be an exception. The Polish government signalled that it was open to most of Cameron's proposals, including those that would require changes to the EU Treaty architecture; see A. Bartkiewicz, "Szymański: Polska chce Wielkiej Brytanii w UE", *Rzeczpospolita*, 29 November 2015.

<sup>67</sup> See the preamble of the EU Treaties and Art. 1 of the TEU.

<sup>68</sup> See V. Miller, "'Ever closer union' in the EU treaties and the Court of Justice case law", Briefing Paper, No. 07230, House of Commons Library, 16 November 2015.

(although until 2017 member states can adhere to the old voting procedure) will not hesitate to gang up on Britain and other euro-outs. The incident with the bridging loan for Greece only strengthened Eurosceptic concerns about a eurozone caucus. The eurozone countries attempted to use the European Financial Stabilisation Mechanism to provide financial assistance to Greece without consulting euro-outs, although the latter contributed to the fund. Only after the intervention of the European Council president were the deliberations shifted to the EU-28 level. In his letter to Donald Tusk, Cameron asked other EU leaders to make sure that any issues that affect all member states are discussed and decided by the EU-28 and that the integrity of the single market is protected. He also wants to obtain a guarantee that the British people are not liable for any actions to rescue euro-ins that face financial troubles.

Cameron pledged that he was not looking for veto rights over eurozone decision-making. Member states have worried that he would demand a veto for the City of London, the British financial centre. But Cameron has apparently learnt a lesson from December 2011 when member states refused to tolerate his transactional political style (he demanded certain privileges for the City of London in exchange for consent to a treaty change.) Yet, at the time of writing, Cameron has not revealed which legal mechanisms would help him to ensure a fair relationship between euro-ins and euro-outs. Experts in London and in Brussels have pointed to, among others, the idea of an 'emergency brake'. The emergency brake could be triggered by any of the euro-outs if they worried that eurozone deliberations would affect the integrity of the single market. The European Council would have to review the matter and look for a compromise.<sup>69</sup> According to these ideas, euro-outs would only be able to delay decisions rather than block them for good. But euro-ins worry that such a mechanism would hamper the eurozone's capability to respond to crisis situations and Cameron will need to twist some arms in eurozone countries to garner support for the idea of safeguards for euro-outs. He will struggle, however, to secure legal recognition that euro membership is voluntary for all, as this would require a treaty change. The TEU indicates that the EU's objective is an Economic and Monetary Union (EMU) whose currency is the euro and all member states, apart from Britain and Denmark, are legally committed to adopt the common currency. Member states will probably see little harm in recognising the current status quo that EU countries use different currencies.

### **Free movement of labour**

Finally, the British government wants to exert greater control on migration from within the EU. It wants to restrict free movement of EU workers from any further states joining the Union. In its view, EU citizens from new member states should be denied this right until their economies have converged with those of their Western peers. It thinks that this is a win-win situation for both old and new member states: it would help to stem a pressure that the EU workers have exerted on the public services of the host countries and would address the problem of brain drain in new member states. But there is no appetite in the EU to expand

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<sup>69</sup> See C. Grant, "Cameron's EU gamble: Five reforms he can win, and ten pitfalls he must avoid", CER Policy Brief, CER, London, October 2015.

anyway, as it struggles to safeguard its current borders. And in any case, Montenegro, the only country with a chance of EU accession in the foreseeable future, only has a population of 620,000 and would not constitute a great strain on the British economy.

But Cameron has gone a step further; he wants to curb access to in-work benefits and social housing for citizens from the current member states for the first four years after their arrival in the UK. In the letter to Tusk, he also said he wanted to halt the child allowances paid to EU workers if the children are not resident in the UK. A compromise may be possible in the area of child allowances, as some member states, like Belgium and Denmark, share Britain's frustration. Furthermore, the European Commission is planning to review the current law on the coordination of social security systems, which opens a window of opportunity for Cameron. But he will find it very difficult to convince the other 27 EU member states of his idea to limit access to in-work benefits if it entails discrimination between EU and British workers. The principle of non-discrimination of EU workers on the basis of their nationality is a central plank of the single market and is inscribed in the EU Treaties. There is little, if no appetite to dismantle this principle.

### **Outlook**

Donald Tusk, who coordinates talks between Britain and other member states, will try to help the British government and pave the way for a deal in February 2016. In his letter to the EU leaders of 7 December 2015, Tusk urged all member states to seek a compromise that would benefit both the UK and the EU by "cementing foundations on which the EU is based".<sup>70</sup> If Cameron follows Tusk's advice and refrains from demanding changes to the rules that have driven the single market – one of the few EU policies still seen as among Europe's greatest achievements – he stands a chance of obtaining a quick deal based on his reform package.

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<sup>70</sup> See the letter by President Donald Tusk to the European Council on the issue of a UK in/out referendum, 7 December 2015.